

Planning Committee

Report of Head of Planning and Building Control on 05 August 2021

Plans List Item Number: 3

Reason for bringing to committee

Significant Community Interest

Application Details

Location: THE FRYING PAN, BILSTON STREET, DARLASTON, WEDNESBURY, WS10 8EY

Proposal: CHANGE OF USE FROM PUBLIC HOUSE TO BUSINESS CENTRE

Application Number: 21/0397

Case Officer: Rebecca Rowley

Applicant: Jacob Asset Management Ltd

Ward: Darlaston South

Agent: Lee Mitchell

Expired Date: 15-Jun-2021

Application Type: Full Application: Change of Use

Time Extension Expiry:

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;
 - Addressing the final outstanding points in relation to the submitted Sequential Test;
- and
- No objection from the Council's Pollution Control Team



Proposal

This application seeks permission to change the use of part of the building that housed the former public house known as The Frying Pan to a Business Centre. An existing chip shop which occupies the ground floor frontage facing Willenhall Street would remain unaffected.

The Business Centre would consist of 12 self-contained office suites ranging in size from 1 person to 4 person offices, and 1 conference suite as well as a reception, a communal kitchen and toilet facilities. There would be minimal change to the external appearance of the building.

Opening hours would be:

Monday to Friday: 7.30am – 9.00pm

Saturday: 8.00am – 9.00pm

Sunday: 10.00am – 4.00pm

These hours are when the building would be officially accessible. The application specifies that the main usage of the building would be during 'normal' office hours, which have not been specified but are likely to be between 8am and 6pm.

The centre would create 4 full time jobs and employ a maximum of 2 staff at any time during opening hours.

There would be 39 dedicated off-street parking spaces, including 11 that would be shared with the chip shop at the front of the building. Allocated disabled parking bays would be provided.

An allocated bin storage area and cycle storage provision for 4 cycles have been indicated on the site plan.

Site and Surroundings

The application building is located on a corner plot at the junction of Willenhall Street and Bilston Street. The frontage of the building, facing Willenhall Street has two floors, the side elevation facing Bilston Street and the rear of the building is single storey. The front rooms of the ground floor of the building house a chip shop which would be retained as a separate operation. There is a 3 bedroom residential flat on the first floor which would also be retained. There are 3 trees at the rear of the application site which are shown to be retained.

The site lies approximately 60m outside of the Darlaston District Centre boundary. The site itself does not have any specific use allocation in the Council's adopted Development Plan. To the north and north west sides of the site is residential use. On the opposite side of Willenhall Street are industrial uses comprising Alma Industrial Estate and Land fmr London Works (allocated as local industry consider for release under sites IN123 and IN126 of Site Allocation Document Policy IND4). To the south west of the site is further residential use with Old Church Primary School located behind the houses, approximately 130m from the application site. To the south east of the site is a Salvation Army building, to the south is a Social club and to the rear of the site, on the opposite side of St Lawrence Way is a childrens' day nursery.

There is a bus stop 75m from the application building serving routes to Walsall, Willenhall, Wednesbury and Bilston.

Relevant Planning History

15/0624 - Part change of use to A5 Hot Food Takeaway, new shopfront and extraction duct – granted permission 20/04/2017

13/1372/FL - Single storey childrens' room, smoking shelter, garage extension, boundary wall and railings – granted permission – 21/03/2013

BC11493 – Erection of New Public House and Construction of Car Park – granted permission – 22/03/1979

Relevant Policies

National Planning Policy Framework (NPPF)

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 2 – Achieving sustainable development**
- **NPPF 4 – Decision Making**
- **NPPF 6 – Building a strong, competitive economy**
- **NPPF 7 – Ensuring the vitality of town centres**
- **NPPF 8 – Promoting healthy and safe communities**
- **NPPF 9 – Promoting sustainable transport**
- **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

Saved Policies of Walsall Unitary Development Plan

- GP2: Environmental Protection
- GP6: Disabled People
- ENV32: Design and Development Proposals
- 5.3 to 5.11 Strategic Policy Statement
- S1: Definition of Town Centre Uses

- S6: Meeting Local Needs
- S7: Out-of-Centre and Edge-of-Centre Developments
- T7 - Car Parking
- T9 – Cycling
- T12: Access by Public Transport (Bus, Rail, Metro and Ring and Ride)
- T13: Parking Provision for Cars, Cycles and Taxis

Black Country Core Strategy

- CSP4: Place Making
- EMP1: Providing for Economic Growth
- CEN2: Hierarchy of Centres
- CEN5: District and Local Centres
- CEN7: Controlling Out-of-Centre Development
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality

Supplementary Planning Document

Conserving Walsall's Natural Environment

Development with the potential to affect trees, woodlands and hedgerows

- NE7 - Impact Assessment
- NE8 – Retained Trees, Woodlands or Hedgerows
- NE9 – Replacement Planting
- NE10 – Tree Preservation Order

Designing Walsall

- DW1 Sustainability
- DW2 Safe and Welcoming Places
- DW3 Character
- DW4 Continuity
- DW5 Ease of Movement
- DW8 Adaptability

Consultation Replies

Archaeology

No response provided

Coal Authority

No objections, high risk coal note for applicant included

Drainage

No response provided

Ecology Officer

No response provided

Local Highway Authority

09/06/2021

The Highway Authority cannot support the application based on the current details due to insufficient information.

23/07/2021

Following the submission of additional information on the expected number of users and staff and details of the operating times, the Highway Authority is now satisfied that the development will not have an unacceptable impact on road safety or have severe cumulative impacts on the operation of the road network and is acceptable in accordance with the NPPF 2021 paragraph 111, subject to conditions to secure appropriate provision of a cycle shelter and 3no. allocated disabled parking spaces.

Public Health

No response provided

Strategic Planning Policy

24/06/2021

The site lies approximately 60m outside Darlaston District Centre and is considered to be an 'edge-of-centre' location. Sequential Test required to explore the possible availability of alternative sites within Darlaston District Centre and to consider economic impact and transport.

The proposed mixed use appears to be comprehensive and makes effective use of land. Proximity to nearby housing allocations could support employment opportunities for future residents.

Concerns regarding loss of community uses (a public house). Other viable community uses should be explored.

23/07/2021

(Following submission of a sequential test and plans demonstrating cycle shelter provision)

The submitted sequential test is in line with our recommendations and is acceptable subject to the applicant agreeing to a number of interpretations that have been made on its content. We acknowledge the inclusion of cycle storage to encourage sustainable travel to and from the site.

Further consideration should still be given to potential alternative community use being incorporated within the overall scheme i.e. community enterprises or not-for-profits.

Tree Preservation Officer

No objection.

Representations

17 representation were received in response to this proposal raising the following points (*Officer comments in italics*):

- Loss of a local community facility.
- Not enough pubs left in the area.
- People will have to go out of town to socialize and that will take away jobs for local people in the town.
- The community pub is more beneficial and potential for job creation and retention in the town.
- Won't benefit the community.
- There are enough business units in the area/We don't need a business centre.
- This sort of development belongs in one of the many other available buildings in the area that are suitable.
- Not in keeping with the local area, this is a residential area and not suitable for this type of business use.
- Jobs can be created in areas requiring investment and development in another area of Darlaston.
- Close proximity to a school.
- As a pub any traffic increase is after school hours and increased traffic created at peak times will be a hazard to families walking to school.
- Increased traffic causing congestion, noise nuisance and increased pollution.
- References have been made to the applicant having a relationship with J9 Accommodation and concerns regarding the site being used to create residential accommodation or a hostel (*the Local Planning Authority has a duty to determine a planning application on the basis of the information submitted and cannot consider alternative future uses which would need to be considered separately and on their own merits at that time*).
- Not a very good idea and people have signed the online petition (*no petition has been formally submitted to the Local Planning Authority to consider as part of this current planning application*).
- A previous planning application ruled that the Frying Pan was central to the community and the use of the building should not be altered. What has changed? (*Each application is judged on its own merits*).
- Why have the new owners started carrying out internal renovations (*the carrying out of physical internal works do not require planning permission*).
- I can't understand why there is a loss of 39 parking spaces (*whilst the application form incorrectly indicates a loss of 39 spaces, the submitted site plan demonstrates the retention of all 39 parking spaces which would be secured by condition on any approval*).

Determining Issues

- Principle of Development
- Design, Layout and Character
- Amenity of Neighbours and Amenity of Future Occupiers
- Highways
- Trees / Protected Trees

Principle of Development

This site does not have a site-specific allocation in the development plan, and the existing building and area do not have any heritage designations.

The site lies approximately 60m outside Darlaston District Centre. This application is requesting permission for a town centre use in an edge-of centre location. Furthermore, the change of use from a public house involves the loss of a community facility. The Strategic Planning Policy Team initially requested provision of a sequential test to detail evidence that no other alternative units are available to meet the level of proposed provision in Darlaston District Centre and that concerns over economic impact and transport were addressed in accordance with Saved UDP, BCCS and NPPF policies. A sequential test and plans demonstrating the provision of cycle storage at the site were subsequently submitted.

The key planning policy issues for the proposal comprise the loss of the existing community facility (applying saved UDP policies LC8 and S6, and the NPPF paragraph 93) and the appropriateness of the location for offices (applying in particular NPPF paragraph 87, BCCS policies CEN1, CEN2, CEN4 and CEN7, and saved UDP policies S6 and S7).

Efforts to lease the site and economic viability considerations, existing nearby facilities and recent vacancy of use, as required by saved UDP policy LC8, are all referred to in the Design and Access Statement and that it would not be viable to retain the facility for use as a Public House. Accessibility of alternative provision has been evidenced by the developer in the Design and Access Statement and has been evidenced to be plentiful within walking distance. When considering the proximity of other public houses and clubs, this inactive site comparatively does not appear to serve an important local need. This addresses one concern raised by a number of local residents. It is noted that the site also sits among other local community uses and services along Bilston Street and The Leys, namely the Old Hall People's Partnership, Salvation Army Citadel and Sports and Social Club that would offer continued community use. This accords with the requirements of saved UDP policies S6 and LC8.

Concerns raised by local residents that there is no need for a business centre or that a business centre should be located elsewhere in the area, specifically in vacant business units. The BCCS identifies a need for additional offices as part of the employment portfolio to meet economic requirements. However, both national policy, the BCCS and saved policies of the UDP direct offices to main town centres. It is acknowledged that the extant use is a town centre use as defined by saved UDP policy S1. Saved UDP policy S7 outlines the circumstances under which edge-of-centre development such as this proposal may be supported. The proposal would not occupy a site that has been allocated for provision of any other service and would not deprive the local community of access to basic shops and services. The sequential test submitted has demonstrated to the satisfaction of the Strategic Planning Policy Team that there are no more suitable sites within Darlaston District Centre boundary that could accommodate the floor space proposed in the application and is

acceptable subject to agreement from the applicant to a number of interpretations made on its content. An update on this will be provided for Members in the supplementary paper.

This site represents an edge-of-centre location immediately adjacent to the centre boundary with good public transport provision. The proposed use would not require an increase in parking provision based on the parking standards in the Saved UDP, although it is recognised that the hours of use are likely to change, with an increase in traffic movements at peak times. The Local Highway Authority have expressed that there would be no significant adverse traffic impact on the local highway network. Therefore this proposal meets the requirements of saved UDP policy S7.

NPPF Paragraph 119 refers to development needing to make effective use of land. This scheme promotes mixed uses through the retention of the hot food takeaway (chip shop) unit to the ground floor and the residential unit (apartment) to the first floor. In this way, the scheme appears to be comprehensive and makes effective use of land.

It is considered that given the restrictive housing allocations to the west, an application for town centre uses on this site in proximity to these allocations could support employment opportunities for future residents while the 'business centre' model would foster embryonic business growth.

One representation received observed that the loss of this building as a public house would take away jobs for local people. It is acknowledged that the site has been vacant for some time so currently provides no jobs and the information provided by the applicant has sufficiently demonstrated that the use of the site as a public house would likely not be viable moving forward. Reuse of this site for the proposed purpose would bring investment into the area from businesses occupying the proposed office space and potentially create jobs within these businesses for local residents.

However, the Strategic Planning Policy team has raised a concern that while efforts to continue current use by the applicant have been detailed, they would like to see explored options to bring the site into another form of other viable community uses before other uses are considered. The applicant could either identify viable community uses for this site or make available one, or some, of the business units within this proposed scheme for community enterprises or not-for-profits. This has been discussed with the applicant and any suggestions that are put forward will be included in the supplementary paper for consideration.

Notwithstanding any details to follow regarding a potential community use at this site, it should be noted that nearby provision of alternative community facilities has already been demonstrated in addition to the unviable future of the extant public house use. Furthermore, on balance, the proposed mixed use which would make effective use of this site along with the creation of employment opportunities weighs in favour of the proposal and this proposal is therefore considered to be acceptable and in accordance with local and national planning policies and guidance as set out.

Design, Layout and Character

The only alterations to the exterior of the building that are apparent from comparison of the plans to the existing building would be:

- bricking up of 3no. single pane windows on the north side elevation;
- replacement of 1no window on the northern side of the rear elevation with a fire door; and
- replacement of 4 single pane windows on the south side elevation with 2no. windows that would be 3 panes wide.

There are no proposed alterations to the front elevation. It is considered that there are no proposed alterations to the exterior of the building that would have any significant impact on the character or overall appearance of the application building or the locality.

Amenity of Neighbours and Amenity of Future Occupiers

This application does not request permission for any extensions or alterations to the structure of the building that would have any impact on neighbouring amenity above and beyond the existing situation.

It is considered that the activities taking place at a business centre would likely create no further potential for noise and disturbance to local residents than could be caused by the extant use and any disturbance created would be at more sociable hours than activity usually associated with a public house use that would carry on much later into the evening. Pollution Control Officers have been consulted and any comments or conditions that are recommended will be included in the supplementary paper for consideration. On balance, the proposal is considered acceptable.

Highways

Following an initial objection from the Local Highway Authority on the basis that there was insufficient information contained within the application to make a fully informed assessment of the potential impact of the proposal on the local highway network, further supporting information has since been submitted by the applicant. Following the submission of additional information on the expected number of users and staff and details of the operating times, the Local Highway Authority observe that parking for up to 39 cars is provided. Taking into account the proposed business use requires a maximum of 16 spaces under the provisions of Saved UDP Policy T13 based upon a GFA of 423sqm and there will be a maximum of around 50 (12 suites x 4 users +2 staff) users on site at any one time, it is considered that there would be more than adequate parking to cater for all the uses on the site.

It is recognised that the travel pattern to the Business Centre is likely to be significantly different to that of the extant uses and is likely to generate more traffic in the traditional peak traffic periods, particularly in the AM peak when parents are dropping off school children to the nearby school. The local streets around the site are, at times, extremely congested due to the close proximity of a primary school and therefore the potential impact the proposed use will have on existing parking and congestion has been considered. If all the users turned up by car in the AM peak period, which is considered unlikely, this would equate to 1 trip every minute spread over the peak hour. It is accepted that these trips will effectively be new trips on the highway network to this site during this period over and above those to the extant uses which are mainly in the evenings.

However, taking into account that the site is relatively sustainable being a reasonable walking distance to Darlaston District Centre and there is adequate parking on site to minimise any potential over-spill parking onto the highway, on balance, it is considered that the development will not have an unacceptable impact on road safety or have severe cumulative impacts on the operation of the road network and is acceptable in accordance with the NPPF 2021 paragraph 111. This acknowledges and addresses concerns that have been raised by local occupants regarding the impact of this proposal in relation to the proximity to the nearby school, increased traffic created at peak times being a hazard to families walking to school and increased traffic causing congestion, noise nuisance and increased pollution.

The Local Highway Authority does not object to the proposal subject to conditions to secure the appropriate provision of a cycle shelter and the allocation of 3 parking spaces for disabled users. These would be included on any permission.

Trees / Protected Trees

There are three mature trees located on a grassed amenity area immediately beyond the rear elevation of the application building. They are shown on the Council's records as being protected trees, however, the Tree Officer has confirmed that the TPO was never confirmed because these trees were severely pruned by the owner. As these trees were not the subject of a Tree Preservation Order at the time of pruning, the owner carried out this work lawfully, but the trees could no longer be protected as they were not retained in a satisfactory condition. These trees are shown on the submitted block plan as retained. The Tree Officer has no objections and would not object to their removal in any case.

Conclusions and Reasons for Decision

The application has demonstrated sufficiently that the change of use of the premises fulfils the requirements of saved UDP policy LC8 and S6 in relation to the loss of a community facility and fulfils the requirements of saved UDP policy S7 in relation to the siting of a town centre use in an edge-of-centre location, including fulfilment of the sequential test, subject to agreement from the applicant on a number of final points raised on its content. The proposed use is unlikely to result in any significant additional harm to Darlaston District Centre to warrant a refusal reason, its use will

provide new business to operate in the locality providing employment opportunities and will not have any additional impact on surrounding residents over and above any already experienced from businesses which currently operate in the area or the extant use of the site as a Public House, nor would it cause significant further harm to highway safety.

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, specifically paragraphs 87, 93 and 119, Black Country Core Strategy policies CEN5 and CEN7, Saved Unitary Development Plan policies GP2, GP6, ENV32, S1, S6, S7, T7, T9, T12 and T13 and the Supplementary Planning Document Designing Walsall and on balance is considered to be acceptable.

The use of safeguarding conditions in respect of the plans, the hours of use, , disabled parking provision and cycle storage provision 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.

Positive and Proactive Working with the Applicant

Officers have spoken with the applicant's agent regarding the requirement for submission of a sequential test and plans to demonstrate provision of a refuse storage area and cycle storage. Amended plans and additional information have been submitted which enable full support to be given to the scheme.

Recommendation

1. 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;
 - Addressing the final outstanding points in relation to the submitted Sequential Test; and
 - No objection from the Council's Pollution Control 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 18/03/2021
- Site Plan, submitted 20/04/2021
- Proposed Plan, drawing no. 1699 - 1, submitted 23/07/2021
- Design and Access Statement, submitted 14/06/2021
- Sequential Assessment, dated 19/07/2021

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).

3a) Notwithstanding the details as submitted and prior to commencement of the development hereby permitted, full details of the proposed cycle shelter, shall be submitted to and approved in writing by the Local Planning Authority. The cycle shelter shall be covered and illuminated.

3b. The development hereby permitted shall not be carried out otherwise than in accordance with the agreed cycle shelter facility details and shall thereafter be retained and used for no other purpose for the lifetime of the development.

Reason: To encourage sustainable modes of travel and in accordance with UDP policy T13 and Black Country Core Strategy TRAN4.

4a. Notwithstanding the details as submitted and prior to the first use of the development hereby permitted, at least 3 parking spaces shall be allocated for disabled users and demarcated accordingly. The spaces shall be located as close as possible to an accessible entrance.

4b. The disable parking spaces shall thereafter be retained and used for no other purpose for the lifetime of the development.

Reason: In accordance with UDP Policy T13.

5. The development hereby permitted shall not be open to customers otherwise than between the hours of 07:30am to 21:00pm Mondays to Fridays; between the hours of 08:00am to 21:00pm Saturdays and between the hours of 10:00am and 16:00pm Sundays and Bank and Public Holidays.

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

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.

3: The Coal Authority's High Risk Coal note to applicant would be included on any approval.

END OF OFFICERS REPORT