

**PLANNING
COMMITTEE**

10th February 2021

Planning Application 20/01498/FUL

Application to provide A1-A3-A5 (Class E + Sui Generis) comprising retail shop / cafe restaurant / hot food takeaway use

Unit 11, Milward Square, Kingfisher Shopping Centre, Redditch

**Applicant: Tom Johnson: Capital and Regional
Ward: Abbey Ward**

The case officer of this application is Steven Edden, Principal Planning Officer (DM), who can be contacted on Tel: 01527 548474 Email: steve.edden@bromsgroveandredditch.gov.uk for more information.

Site Description

The application site comprises part of the unit formerly occupied by Marks and Spencer, specifically the former food hall which has been vacant for some time. Before the unit became vacant, members may recall that access to the food hall was via Milward Square. Opposite (to the south) of the site lies the retail unit 'The Range'. The site area measures 583m² in area.

Proposal Description

The proposal seeks permission principally to use the first floor of the unit as a 'Dark Kitchen' where foods would be prepared for hot food takeaway. Food would be taken away via the service road (Silver Street) by delivery drivers acting for companies such as deliveroo, uber eats, and just-eat. It is expected that deliveries could be via car but most likely by scooter / powered two wheelers (PTW).

The retailer Next who are currently situated within close proximity to the site (with pedestrian access to the southern side of Milward Square) will be re-locating to the vacant former Marks and Spencer unit (which excludes the former M&S foodhall) in Spring 2021. The ground floor (the former food hall) will be operated by the company 'Simply Fresh' who are a grocery food outlet. Access to Simply Fresh will be via Milward Square.

Relevant Policies:

Borough of Redditch Local Plan No. 4

Policy 30: Town Centre and Retail Hierarchy

Policy 31: Regeneration for Town Centre

Policy 32: Protection of the Retail Core

Others

NPPF National Planning Policy Framework (2019)

PLANNING COMMITTEE

10th February 2021

Relevant Planning History

None

Consultations

Town Centre Co-ordinator

This application to bring the former M&S unit back into use is supported. It is hoped that the proposals will bring additional local jobs to Redditch.

Worcestershire Regulations Services (WRS) – Noise & Odour.

Comments summarised as follows:

I have no adverse comments to make. However please consider the following comments in your decision making process:

The explanatory note of Noise Policy Statement for England (NPSE) defines the following terms used in the National Planning Policy Framework (NPPF) with classifications being: NOEL (no observed effect level), LOAEL (Lowest observed effect level) SOAEL (Significant observed effect level).

The noise report has identified that in terms of the NPSE guidance, the predicted cumulative impact of additional vehicle movements due to this application will entail an increase of 4 dB at residential receptors during the most sensitive night-time assessment period. This is classed as being of 'slight /moderate impact' or LOAEL.

BS4142:2014, Methods for rating and assessing industrial and commercial sound, describes methods for rating and assessing sound of an industrial and/or commercial nature. The standard covers the loading and unloading of vehicles and also the movement of vehicles. However, the passage of vehicles on public roads is outside of the scope of this standard. The service road in which vehicles associated with this planning application will travel is not a public road as it is not an adopted highway. Notwithstanding the above, the noise report advises that the prominent noise level at the closest receptors is the Redditch Ring Road. This service road is also used by other traders and other traffic associated with the Kingfisher Centre. In terms of this standard, the noise report advises of +11dB rise which equates to significant impact which is acknowledged as undesirable. Careful consideration of the context is a key factor when applying BS4142:2014 to scenarios. The factors mentioned above and given the context that delivery vehicles already use this road, it could be argued that this extra traffic flow does not introduce an entirely 'new' noise source to the area.

The World Health Organisation (WHO) offers advice in its published document 'Guidelines for Community Noise' pertaining to noise levels that can give rise to the onset of health effects to excessive noise exposure. This is measured in the frequency of an event over a short period of time and the likelihood of causing sleep disturbance. The frequency of occurrence of maximum (L_{Amax}) noise events should not typically exceed

**PLANNING
COMMITTEE**

10th February 2021

45 dBA 10-15 times in any night (23:00-07:00). The noise report advises that current traffic on the service road does trigger the 45dBA threshold for disturbance and advises of 8 incidences during the survey period between the hours of 01:00-04:00. It is therefore anticipated that there are regularly in excess of 15 vehicle movements along the road adjacent to Evesham Mews in a typical night time period (23:00 - 07:00). This could be interpreted that the current traffic flow on this service road already exceeds the recommended 15 occurrences or an alternative view is that the current consented uses of the access road are not generating noise complaints so additional occurrences will go unnoticed.

In terms of the plant required to serve the development, I note that it is the applicant's intention to submit a separate planning application where noise and odour arising from the plant would be assessed against its impacts upon residential amenity accordingly.

In summary the wider noise climate in this area needs to be considered in its current context. Occupiers of the Evesham Mews development are situated within close proximity of an existing commercial hub and there is an argument that these residents should expect a different standard of amenity compared with that of a purely residential area. It is my understanding that all residents have been consulted and no objections have been received. The noise report has based its findings on measured levels of vehicles that operated in an orderly manner, no loud music, squealing of tyres etc and although this management is outside the control of the planning remit, correct management and maintenance of vehicles should fall within the code of 'respecting thy neighbour' which should limit the potential for noise complaints to the local authority.

Worcestershire County Highways

No objection

Public Consultation Response

Occupiers of the 'Evesham Mews' residential development consulted by letter. No representations received. Site Notice displayed. No comments received.

Background

In earlier reports to the Planning Committee, members have been informed of changes to the Town and Country Planning (Use Classes) 1987 (as amended). Changes came into effect on 1st September 2020 which now mean that 'A' use classes cease to exist, that is, (formerly) Class A1(shops), A2 (financial and professional services), A3 (cafes and restaurants) A4 (drinking establishments) and A5 (hot food takeaway). Former classes A1, A2, and A3 now fall within the (new) class E. Former A4 uses are reclassified as 'Sui Generis' Uses and former A5 uses are similarly classified as Sui Generis Uses.

Members will no doubt be aware that when Marks and Spencer were trading as a retail fashion outlet, the unit also contained an ancillary café restaurant with access from the northern side of the unit. Simply Fresh will also accommodate a small café area to complement their grocery food outlet within the former food Hall. It is understood that

PLANNING COMMITTEE

10th February 2021

Simply Fresh and Next have a close working relationship and internal access between the units is intended to allow customers to be able to move freely between the two.

Assessment of Proposal

Principle of development

As set out above, the re-classification of the A1 to A3 uses into the new Class E came into effect on 1st September 2020. However, permitted development rights afforded by the existing Town and Country Planning (General Permitted Development) (England) Order 2015 do not come into effect until 31st July 2021. This means that at present (for example) a shop may not change to a restaurant without first obtaining a planning permission. Notwithstanding this, your officers consider that the Governments overall direction of travel in this respect is clear. Having regard to the former and proposed level of floorspace which would be used for café / restaurant use relative to that of retail use, there are not considered to be any material differences. This fact together with the new 'E' class categorisation as set out above leads your officers to conclude that the ground floor operation of the unit by Next and Simply Fresh in the manner proposed is acceptable and does not require further consideration.

The merits of this application therefore rest on whether the use of the upper (first) floor for hot food takeaway use is acceptable in planning terms.

The site is located within a Retail Core area, as identified in the Borough of Redditch Local Plan No.4 and therefore Policy 32: Protection of the Retail Core is of particular relevance.

The purpose of Policy 32 is to ensure the vitality of the Town Centre. Other uses complement the retail offer and can enhance the vitality, however, there is a need to ensure that these uses do not stifle thriving shopping areas.

Policy 32 comments that non-retail uses that demonstrably contribute to the vitality and viability of the Centre will be assessed on their own merits.

The first floor 'dark kitchen' would provide catering support during trading hours to the ground floor café restaurant within Simply Fresh. Out of shopping centre trading hours, the dark kitchen would continue to function, catering for a home delivery (hot food takeaway) service.

In principle, the proposed hot food takeaway proposal is considered to be acceptable since it would not result in the loss of existing retail floorspace and would add to the vitality and viability of the Kingfisher Shopping Centre (KSC).

**PLANNING
COMMITTEE**

10th February 2021

Residential amenity and safety considerations

Currently the Kingfisher Shopping Centre can be open 24 hours a day seven days a week.

However outside of special events the centre is open to the public from:
9:00-5:30pm Mon-Wed; 9am-7pm Thurs; 9am-5:30pm Sat; 10:30-4:30pm Sun

The ground floor grocery offer and ground floor café / restaurant provided by Simply Fresh would be open to the public in line with the existing shopping centres opening hours.

The dark kitchen would operate effectively as, de facto a self-contained business by delivering food to customers via companies such as deliveroo, uber eats, and just-eat to customers who have ordered food via phone or online. The dark kitchen would be active between the hours of 7am to 4am. There would be no on-site collection facility. During Simply Fresh trading hours the dark kitchen would provide catering support to the (ground floor) Simply Fresh restaurant /café.

It is important to stress that customers will not be permitted to takeaway food from the dark kitchen. Takeaway would be via delivery drivers only. The service area and Silver Street is managed by the KSC. Silver Street is not adopted (public) highway and existing barriers prevent (public) vehicular access. Aside from anti-social behaviour (ASB) which might arise from customers collecting food directly from the dark kitchen, Silver Street is a busy service area where vehicular / pedestrian conflict would arise if general access to the public were to be permitted.

A noise impact assessment has been undertaken by RBA Acoustic to assess the impact of noise arising from night-time takeaway delivery vehicles upon the nearest dwellings: those being the Evesham Mews flats which are located off Silver Street to the south.

The report has concluded that the application would have no adverse impact upon those occupiers. All occupiers within the Evesham Mews development have received letters informing them of the application proposals and no representations have been received in objection to the application, where the consultation period expired on 14th January 2021. Notwithstanding this, Worcestershire Regulatory Services have carefully examined the findings of the acoustic survey setting out their comments above. Members will note that no objections have been received.

Whilst expected to be relatively minor in nature, final plant design / extraction systems and specification which would be installed on the roof, will be subject to a second, separate application for planning permission which would again be examined by WRS.

Other matters

WCC Highways have been consulted and no objections have been received.

**PLANNING
COMMITTEE**

10th February 2021

Conclusion

The proposals are welcomed in so far as new commercial uses would occupy current vacant floorspace within the KSC, adding to the vitality and viability of the KSC. No adverse amenity impacts have been identified and in the absence of this, the application is supported.

RECOMMENDATION:

That having regard to the development plan and to all other material considerations, planning permission be GRANTED subject to the following conditions:

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of the grant of this permission.

Reason: In accordance with the requirements of Section 91(1) 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 approved shall be carried out in accordance with the following plans and drawings:

Drawing 19003_060_00_Exst_00 Rev A
Drawing 19003_060_01_Exst_01 Rev A
Drawing 19003_060_Block Plan
Drawing 19003_060_Location Plan
Drawing 19003_065_00_Proposed_00_Rev A
Drawing 19003_065_01_Proposed_01_Rev A
Drawing 19003_068_00_Service Area
RBA Acoustics Noise Impact Assessment report 10584/NIA

Reason: To provide certainty to the extent of the development hereby approved in the interests of proper planning.

- 3) Hot food takeaway from the first-floor dark kitchen is permitted via delivery drivers only. Customers are not permitted to take away food directly from this area.

Reason: The merits of the application have been assessed on this basis. In the interests of highway safety and protecting residential amenities.

Procedural matters

This application is reported to Planning Committee for determination because the application proposes a hot food takeaway use. Such applications fall outside the scheme of delegation to Officers.