

18/03475/APP



© Crown Copyright and database right 2019. Ordnance Survey 100019797

REFERENCE NO	PARISH/WARD	DATE RECEIVED
18/03475/APP	BUCKINGHAM NORTH WARD	03/10/2018
CHANGE OF USE OF LAND FROM PUBLIC HIGHWAY TO AN OUTDOOR SEATING AREA 1-2 MARKET HILL, MK18 1JS	The Local Member(s) for this area is: - Cllr Simon Cole Cllr Timothy Mills	
Coffee#1 Ltd STREET ATLAS PAGE NO. 41		

1.0 The Key Issues in determining this application are:-

a) The planning policy position and the approach to be taken in the determination of the application including whether the development is in accordance with the Buckingham Neighbourhood Development Plan and the most relevant policies in the Aylesbury Vale District Local Plan (The Development Plan).

b) Whether the proposal would constitute a sustainable form of development having regard to:

- Building a strong competitive economy
- Promoting sustainable transport
- Achieving well-designed places
- Conserving and enhancing the historic environment

c) Impact on the amenities of neighbouring occupiers

The recommendation is that permission be GRANTED, subject to conditions

2.0 CONCLUSION and RECOMMENDATION

2.1 The proposal would preserve and enhance the character and appearance of the Buckingham Conservation Area. Suitable clearance is retained to enable pedestrians, buggies and wheelchair users to safely continue to use the pavement. The proposals would not give rise to any increase in parking provision and the proposed development would not impact on the living conditions of residential properties. Consequently, the proposals would accord with Buckingham Neighbourhood Development Plan Policies EE3 and EE4,, Policies GP8, GP35 and GP53 of the AVDLP, the National Planning Policy Framework and guidance set out in the CIHT '*Designing for Walking*' document.

2.2 It is therefore recommended that planning permission be APPROVED subject to the following conditions:-

1. STC5 – Standard time limit
Reason: RE03

2. The development hereby permitted shall be carried out in accordance with drawing No. A-G/1158-18 P3 REV D and 047 PD01 REV D; submitted under cover

of agents email dated and received by the Local Planning Authority on 4th February 2019 and the 8th April 2019.

Reason: For the avoidance of doubt and to ensure that the details of the development are acceptable to the Local Planning Authority and to comply with the National Planning Policy Framework.

3. The tables, chairs and windbreaks shall be removed from the footway at end of each trading day (i.e. by 20:00 Mondays to Fridays and 18:30 on Sundays, Bank and Public Holidays.)

Reason: To preserve the character and appearance of the Buckingham Conservation Area and to accord with the National Planning Policy Framework

Informative:

The applicant is advised that a Section 115 license must be obtained from the Highway Authority prior to the commencement of the development. A period of 28 days must be allowed for the issuing of the license, Please contact 'Transport for Buckinghamshire' at the following address for information:-

Transport for Buckinghamshire

Aylesbury Vale Area Office

Corrib Industrial Park

Griffin Lane

Aylesbury

Buckinghamshire

HP19 8BP

Tel 0845 230 2882

3.0 WORKING WITH THE APPLICANT

3.1 In accordance with paragraphs 38 and 39 of the National Planning Policy Framework, Aylesbury Vale District Council (AVDC) takes a positive and proactive approach to development proposals and is focused on seeking solutions where possible and appropriate. AVDC works with applicants/agents in a positive and proactive manner by offering a pre-application advice service and updating applicants/agents of any issues that may arise in the processing of their application as appropriate and, where possible and appropriate, suggesting solutions. In this case the applicant submitted amended information which was considered to be acceptable and all outstanding issues have been resolved.

4.0 INTRODUCTION

4.1 This application needs to be determined by the committee because the Town Council have objected to the development proposals and have requested to speak at committee. Despite the applicant submitting amended information, the objection remains. Whilst the Town Council note that pavement cafes can be controlled by licencing this does not preclude the need to regularise the proposed change of use. The Town Council are concerned that sufficient clearance is not retained to allow pushchairs and wheelchairs to pass on the pavement. The scheme however has been amended to address these concerns to allow for a minimum of 1.8 metres of unobstructed pavement which is the recommended minimum distance cited in the CIHT '*Designing for Walking*' document to enable convenient pushchair and wheelchair access.

5.0 SITE LOCATION AND DESCRIPTION

- 5.1 This application relates to 1-2 Market Hill Buckingham which is a part two, part three storey building built-out in the 1970s. 1-2 Market Hill is located within Buckingham Town Centre and Buckingham Conservation Area and forms part of a terrace extending from the White Hart Hotel to The White House. All of the buildings within this terrace are Grade II Listed Buildings with the exception of the application building. The application building adjoins The White House
- 5.2 The building is constructed of brick which has recently be treated with a combination of cream and white render and appears to comprise three storeys from the street elevation although it has a basement level below. The ground slopes to the rear and so the basement forms an additional floor as viewed from the rear. The shop fronts at street level are set back from the pavement are enclosed in arches forming an arcade. The building comprises three distinct bays when viewed from within the Market Hill street-scene. The building was most recently occupied by a bank (Class A2 use) and dry cleaners (Class A1 use). The building is currently undergoing building works associated with the implementation of 18/00328/APP.

6.0 PROPOSAL

- 6.1 The planning application proposes the change of the use of the pavement outside 1-2 Market Hill from public highway to an outdoor seating area to serve a coffee shop the use for which was recently approved under planning application reference 18/03474/APP . The outdoor seating area would comprise three round tables around which two chairs each would be seated. The seating would be enclosed by three windbreaks and the scheme has been amended to account for the Town Council's concerns and retains a minimum of 1.8 metres between the edge of the seating area and the edge of the pavement.

7.0 RELEVANT PLANNING HISTORY

- 7.1 18/00328/APP - Conversion, alterations and roof extension to create eight new 1 bedroom dwellings. Reconstructed and remodelled elevation facade facing Market Hill including new shop fronts.- Infilling of covered front arcade on ground floor to create increased retail area.- Conversion of retail space involving alterations to the external envelope of the building. - APPROVED
- 7.2 18/02554/ACL - Application for a Lawful Development Certificate for an existing use (A1) - ACL1
- 7.3 18/A0328/DIS - Submission of details pursuant to Condition 3 (Part) - Window Details, Condition 4 - External materials, Condition 5 - Protection of adjacent and Condition 7- Drainage – CONDITION DISCHARGED
- 7.4 18/03021/ACL - Application for a Lawful Development Certificate - APPROVED
- 7.5 18/03140/APP - Conversion of part of the lower ground floor to provide a one-bedroom flat within the lower ground level of former NatWest Bank building, including associated external works. – Decision pending
- 7.6 18/03474/APP - Change of use of the above property from a Class A1 (retail) use to a mixed Class A1/A3 use (coffee shop), together with external shop front alterations and the implementation of 2 No. air conditioning condenser units and 4 No. replacement windows to the rear of the property. – Approved
- 7.7 18/03476/AAD - `1 No. illuminated fascia sign and 2 No. illuminated projecting signs – Decision pending

8.0 PARISH/TOWN COUNCIL COMMENTS

Buckingham Town Council – objects and requests to speak at committee – “ *Members strongly object to the acquisition of public highway when a pavement license would suffice, but also points out that this particular footway was too narrow to accommodate tables, chairs and protective barriers AND allow push chairs, wheelchairs and mobility scooters to get past and access the adjacent pedestrian crossing”*

9.0 CONSULTATION RESPONSES

- 9.1 Bucks County Highways – No objection subject to conditions
- 9.2 Heritage Officer – no objection
- 9.3 Environmental Health – no objection
- 9.4 Bucks County Archaeology – no objection

10.0 REPRESENTATIONS

- 10.1 One letter of objection has been received as a result of the publicity surrounding this planning application. The comments can be summarised as follows:
- Manual for Streets require 2 m of clear pavement
 - Remaining walkway would be too narrow
 - Pavement in on an incline – would unbalance tables and chairs
 - Windbreak would not contain tables, chairs and legs and there would be overspill onto the public highway

11.0 EVALUATION

a) The planning policy position and the approach to be taken in the determination of the application

- 11.2 Members are referred to the Overview Report before them in respect of providing the background information to the Policy Framework when coming to a decision on this application.
- 11.3 The starting point for decision making is the Development Plan. For the purposes of this report, the Development Plan consists of the adopted Buckingham Neighbourhood Development Plan and the Aylesbury Vale District Local Plan.
- 11.4 S38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions should be made in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (July 2018) and the Planning Practice Guidance are both important material considerations in planning decisions. Neither change the statutory status of the development plan as the starting point for decision making but policies of the development plan need to be considered and applied in terms of their degree of consistency with the NPPF, PPG and other material considerations. Determination of the application needs to consider whether the proposals constitute sustainable development having regard to Development Plan policy and the NPPF as a whole.

Neighbourhood Plan

- 11.9 The Buckingham Neighbourhood Development Plan was made on the 30th September 2015 following a referendum in which more than half of the participants voted to adopt the plan. The policies within this document are therefore held in full weight for the purposes of decision taking at this time. The BNDP contains the most relevant and up to date policies against which this planning application should be assessed. It contains policies relevant to the principle of the change of use. BNDP policy EE3 relates to the development of the town centre. It explains that applications will be supported for new town centre uses (A1, A2, A3, A4, A5, B1(a), C1, D1 & D2) within Buckingham town centre. Policy EE4 of the BNDP seeks to retain and enhance the primary and secondary retail frontages in the town. BNDP policy I1 required pedestrian routes should be suitable for disabled access. The assessment of the development proposals against the relevant policies are considered in the following sections of this report.

Emerging policy position in Vale of Aylesbury District Local Plan (draft VALP)

- 11.10 Members are referred to the Overview Report for the Council's Emerging Policy Position. The key points of which is that the adoption of the Vale of Aylesbury Plan is planned to take place in 2019 and the policies within it are currently held in limited weight.

Whether the Proposals would Constitute Sustainable Development

- 11.12 The Government's view of what 'sustainable development' means in practice is to be found in paragraphs 7 to 211 of the NPPF, taken as a whole (paragraph 3). The National Planning Policy Framework (NPPF) has a presumption in favour of sustainable development for both plan-making and decision-making.

- 11.13 It is only if a development is sustainable when assessed against the NPPF as a whole that it would benefit from the presumption in paragraph 11 of the NPPF. The following sections of the report will consider the individual requirements of sustainable development as derived from the NPPF and an assessment made of the benefits together with any harm that would arise from the failure to meet these objectives and how the considerations should be weighed in the overall planning balance.

Conclusion on policy framework

- 11.14 In considering this application, the AVDLP and Buckingham Neighbourhood Development Plan constitutes the Development Plan, and this forms the primary basis for determining the application. The emerging VALP will gather increasing weight as it moves forward but has not yet reached a stage at which it could be afforded any meaningful weight in decision-taking nor at which a refusal on grounds of prematurity could be justified. The Council can currently demonstrate a 5 year supply of housing land based on the latest housing land supply calculation.

- 11.16 The relevant objectives are considered below in this report and an assessment is made of the benefits associated with each development together with any harm that would arise from a failure in meeting these objectives.

Building a Strong Competitive Economy

- 11.17 The Government is committed to securing and supporting sustainable economic growth and productivity in order to create jobs and prosperity but also that this would be achieved in a sustainable way. Paragraph 80 states that planning policies and decisions should help to create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

- 11.18 Policy EE4 of the BNDP seeks to retain and enhance the primary and secondary retail frontages in the town. It explains that, to ensure the protection and enhancement of the town centre as a shopping destination, the introduction of new non-retail uses (Classes A2, A3, A4 and A5) will be restricted to 35% of the sum total of the primary retail frontages.
- 11.19 AVDLP policy BU6 relates to the Buckingham primary shopping frontage, within which the application site sits. It states that in this location the Council will not permit changes of use to non-retail uses that weaken the shopping strength and interest of the area. It continues by explaining that that redevelopment that incorporates ground floor shopping uses and enhances the trading characteristics and liveliness of the central area will be permitted.
- 11.20 The development proposals are concerned with the investment in a business premises and significant weight should be apportioned to the fact that the development proposals are concerned with the introduction of a new town centre use to a vacant unit. The change of use of the town centre unit itself was the subject of planning application reference 18/03474/APP which was recently approved under delegated powers. To consider the change of use of the public highway to an outdoor seating area, the pavement café is considered to be a use that will enhance the trading characteristic and liveliness of the central area and will support other retail functions in the town through providing opportunities for linked visits to the town. On this basis the development proposals are considered to comply with the policy EE3 and EE4 of the BNP, policy BU6 of the AVDLP and the advice contained in the NPPF.

Promoting Sustainable Transport

- 11.21 It is necessary to consider whether the proposed development is located where the need to travel will be minimised and the use of sustainable transport modes can be maximised and that safe and suitable access can be achieved, taking account of the guidance in the NPPF. Paragraph 108 requires that in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that appropriate opportunities to promote sustainable transport modes can be taken up, safe and suitable access to the site can be achieved and that any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree. Paragraph 109 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 11.23 Policy I1 of the BNDP requires pedestrian routes to be suitable for disabled access.
- 11.24 AVDLP policy GP.24 requires that new development accords with published parking guidelines. SPG1 'Parking Guidelines' sets out the appropriate parking requirements for various types of development.
- 11.25 In assessing the transport considerations that arise from the proposals, there is no reason to think that the addition of a pavement café would amount to a severe cumulative impact on the highway network particularly given that the Buckingham is a strategic settlement location that is well served by employment opportunities, services and facilities and has good access to public transport. The site is located in an area where alternative transport modes, other than private car, are a realistic, convenient and attractive alternative.
- 11.26 It is necessary to consider the proposals from a highway safety point of view. Originally the development proposals showed a larger seating area with a retained pavement width

of 1.5 metres which falls below the standard to allow safe access. The development proposals have been amended to show a smaller seating area, enclosed by a wind break and leaving between 1.8 metres and 1.9 metres of unobstructed pavement. This meets the minimum requirement set by the CIHT '*Designing for Walking*' document and the highways officer is satisfied with this arrangement and removed an earlier objection to this planning application. Sufficient clearance has been retained to allow pedestrians, wheelchair users and buggies to continue to safely use the pavement. In response to the Town Council's concerns that with the wind breaks and pillars on the building insufficient passing space would be retained, the proposed development was set up and measured in situ. The Planning Officer and Highways Officer measured the arrangement and was satisfied that with the projections on the façade of the building and the footing of the windbreaks, between 1.8 and 1.9 metres of unobstructed highway would be retained. It was also confirmed that the windbreaks are very heavy and would be difficult to move should anybody seek to move them. The development proposals would not give rise to any increased parking requirement.

- 11.27 The development proposals are subsequently considered to be in accordance with BNDP policy I1, AVDLP policy GP.24 and the guidance contained within the NPPF.

Achieving well designed places

- 11.28 The NPPF in section 12 states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.
- 11.29 Planning policies and decisions should ensure that developments will function well and add to the overall quality of the area over the lifetime of the development; are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities); establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit; optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 11.30 Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development. Great weight should be given to outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.
- 11.31 Policy GP.35 of the AVDLP requires development to respect and complement the physical characteristics of the site and the surroundings, the building tradition, ordering, form and materials of the locality, the historic scale and context of the setting, the natural qualities and features of the area and the effect on important public views and skylines. Policy GP.45 is also relevant and that any new development would also be required to provide a safe and secure environment for future occupiers of the site.

11.32 The development proposals relate to the pavement only and will subsequently have no impact on the appearance of the building. A specification of the tables and chairs have been provided and these are of usual appearance and would be acceptable appearance in their conservation area context. It is also noted that the table and chairs are removable and would subsequently not be a permanent fixture. There is no reason, with the use of the windbreak, which is also removable, the proposed pavement café would not be capable of providing a safe and secure environment. The development proposals are subsequently considered to accord with AVDLP policy GP35 and the advice contained in the NPPF.

Conserving and Enhancing the Historic Environment

11.34 There are a number of listed buildings within the vicinity, including both adjacent buildings which are Grade II Listed and designated heritage assets. The site is also located in the *Buckingham Conservation Area (CA)*. Special regard has to be given to the statutory test of preserving the setting of the Listed Buildings under section 66 and preserving and enhancing the character and appearance of the conservation area under section 72 of the Planning (Listed Building and Conservation Areas) Act 1990, which is accepted as a higher duty. The Heritage Officer has concluded that, as the furniture is not fixed and will be removable on a daily basis, this application is supported in heritage terms and the setting of the adjoining Listed Buildings and the character and appearance of the conservation area would be preserved. The proposals are thus considered to accord with section 66 and section 72 of the act AVDLP policy GP53 and the advice contained in the NPPF.

Impact on residential amenity

11.35 The NPPF at paragraph 127 sets out that authorities should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. AVDLP policy GP.8 states that permission for development will not be granted where unreasonable harm to any aspect of the amenities of nearby residents would outweigh the benefits arising from the proposal. Policy GP95 of the AVDLP explains that in dealing with planning proposals, the Council will have regard to the protection of the amenities of existing occupiers. Development that exacerbates any adverse effects of existing uses will not be permitted.

11.36 Whilst it is acknowledged that there are residential flats on the upper levels of the application building and buildings within the site's surroundings, the pavement café will be a day time use and in a bustling town centre location the addition of three outdoor tables are not considered to give rise to any material increase in noise and disturbance. The development proposals are subsequently considered to accord with AVDLP policy GP8 and GP95 and the advice contained in the NPPF.

Case Officer: Laura Ashton