

Case Officer: Shona King

Applicant: Ms R Simpson

Proposal: Change of use of shop to residential use, alterations to rear of property, alterations to front window and two new roof lights (Re-submission of 19/02888/F)

Ward: Fringford and Heyfords

Councillors: Councillor P Clarke, Councillor Corkin and Councillor Wood

Reason for Referral: Officer referral due the controversy or significance of the proposal

Expiry Date: 16 July 2021

Committee Date: 12 August 2021

SUMMARY OF RECOMMENDATION: GRANT PERMISSION, SUBJECT TO CONDITIONS

1. APPLICATION SITE AND LOCALITY

1.1. The application relates to the Kirtlington Post Office stores, part of a two-storey mid terrace stone cottage with a tiled roof facing onto Troy lane. The site is within the built-up limits of Kirtlington.

2. CONSTRAINTS

2.1. The application site is within a designated Conservation Area and whilst the property is not listed, it is bounded by Grade II listed buildings (West View to the north and Garden Cottage to the south), and is in the setting of listed buildings.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

3.1. The proposal is for the change of use of the shop to residential use and to carry out alterations to the shop front, reducing the size of the existing window, and to the rear of the premises. Two rooflights are also proposed in the rear elevation.

4. RELEVANT PLANNING HISTORY

4.1. The following planning history is considered relevant to the current proposal:

16/02557/F – Single storey rear extension – APPROVED

19/02888/F - Change of Use of Shop to Residential, alterations to front window and two new roof lights – REFUSED

5. PRE-APPLICATION DISCUSSIONS

5.1. No pre-application discussions have taken place with regard to this proposal.

6. RESPONSE TO PUBLICITY

6.1. This application has been publicised by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **23 March 2021**, although comments received after this date and before finalising this report have also been taken into account.

6.2. 39 letters of support have been received. The issues raised by third parties in support of the application are summarised as follows:

- Viability of the shop
- Competition with the Co-op and Sainsbury's in neighbouring villages
- Appearance of closed shop
- Visual appearance of alterations to the shop front
- Size of the shop
- Highway safety
- Future of retail in general/change in shopping habits
- Personal circumstances of the applicants
- Need for housing
- Other places to socialise in the village
- Lack of support by residents

6.3. 3 letters of objection have been received. The issues raised by third parties objecting to the application are summarised as follows:

- Publicity of the application
- Accessibility to Co-op in Bletchingdon
- Pedestrian/highway safety
- Impact on environment with increase in car use
- Adequacy of parking at Bletchingdon Co-op
- Lack of trading during lockdown
- Shop struggled prior to Co-op opening
- Shop used for social reasons
- Support from the community
- Use as a community shop
- Disadvantage to applicant outweighed by benefit of shop to village
- Value of premises as a residential property

6.4. The comments received can be viewed in full on the Council's website, via the online Planning Register.

7. RESPONSE TO CONSULTATION

7.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

7.2. KIRTLINGTON PARISH COUNCIL: **Comments** - The following areas were considered by the Parish Council:

- No change to the publicly available documents as submitted previously.

- As additional financial information submitted is confidential it is not possible to determine whether there is a sufficient evidence to support the claim that the PO/shop is no longer financially viable.
- Whether there is evidence that the shop has been advertised as an operational entity at a reasonable price.
- Whether there is demonstrable evidence that the shop as a service is non-viable rather than a particular business model.
- Separation of the retail and accommodation may offer an opportunity for viability with investment.
- Whether Kirtlington could still support a shop in terms of No of residences, population density and demographic as compared to surrounding villages which appear to support shops.
- Value/amenity of a village shop/PO in terms of essential needs of elderly, vulnerable or mobility restricted as well as the convenience to the wider population and wider planning considerations with regards to Kirtlington's Category A status.
- Difficulties in regaining a PO service
- Nearest PO/shop at Weston on the Green appears to thrive
- Value of PO to a village shop owner – provides an additional revenue stream
- PO might reasonably be considered a benefit for a retail shop.
- Bletchington Co-op has stated no intention to pursue a PO contract – either due to demand or due to much less favourable financial terms for all new PO contracts.
- The effect of the timing of the application during unprecedented events of the last 12 months. A local shop ought to have been able to capitalise on supply of provisions.
- Whether there is any potential for replacements elsewhere in the village if the PO/shop are lost.
- A community owned/run shop has been investigated and found to be unviable on a risk/reward basis and abased on the financial and business models investigated the project was concluded as being unsustainable.
- Likelihood of the possibility if any of the village premises in the future making an application for a change of use from residential to commercial. This is likely to be severely restricted and constrained to the village hall.
- Position of the Parish Council in regard to its obligations to preserve the sustainability of the village and in respect to the membership of the Mid-Cherwell Neighbourhood Plan and Forum and in respect of those to represent the will of the village.

Considering the above points the meeting concluded an inconclusive vote of 3 in support and 3 objecting to the application.

The Parish Council's full response can be viewed on the Council's website, via the online Planning Register.

7.3. MID-CHERWELL NEIGHBOURHOOD FORUM: **No comment to date**

OTHER CONSULTEES

- 7.4. LOCAL HIGHWAY AUTHORITY: **No objections** subject to a condition regarding cycle parking
- 7.5. CDC BUILDING CONTROL: **Comment** - Full plans application required

8. RELEVANT PLANNING POLICY AND GUIDANCE

- 8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2. The Cherwell Local Plan 2011-2031 - Part 1 ('CLP 2015') was formally adopted by Cherwell District Council in July 2015 and provides the strategic planning policy framework for the District to 2031. The CLP 2015 replaced several of the 'saved' policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the Development Plan. The relevant planning policies of Cherwell District's statutory Development Plan are set out below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2015)

- PDS1 – Presumption in favour of sustainable development
- ESD15 - The Character of the Built and Historic Environment
- Policy Villages 1 – Village categorisation

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- S29 – Loss of existing village services
- C28 – Layout, design and external appearance of new development
- C30 – Design control

- 8.3. Other Material Planning Considerations
- National Planning Policy Framework (NPPF)
 - Planning Practice Guidance (PPG)

9. APPRAISAL

- 9.1. The key issues for consideration in this case are:
- Principle of development
 - Design and impact on the character of the area
 - Impact on heritage assets
 - Residential amenity
 - Highway safety

Principle of development

Policy context

- 9.2. Paragraph 84 of the NPPF (2021) states that planning policies and decisions should enable the retention and development of accessible local services and community facilities such as local shops. Paragraph 93 of the NPPF places weight on valued local facilities particularly where they meet the community's day to day needs. Paragraph 93 (d) states that shops should be retained for the benefit of the local community.

- 9.3. Saved Policy S29 of the CLP 1996 states that proposals that involve the loss of existing village services which serve the basic needs of the local community will not normally be permitted.
- 9.4. The applicant's agent has argued in the design and access statement submitted with the application that Policy S29 should be given reduced weight due to its age. However, the policy is in accordance with the thrust of paragraphs 84 and 93 of the NPPF and therefore should be given full weight. The supporting text to Policy S29 does acknowledge that it will be difficult to resist the loss of local facilities such as shops when they are proven to be no longer financially viable in the long term. (Albeit that such a qualification does not feature in the named paragraphs of the NPPF).

Applicant's submission

- 9.5. The design and access statement advises that the shop has been under pressure for many years but, with the completion of a Co-op convenience food store in Bletchingdon in September 2019 and the opening of a Sainsbury's Local in Heyford Park, overall trade has reduced significantly and the shop is operating at a loss. It is noted that the previous application was submitted in December 2019.
- 9.6. Financial information has been provided with this application, which shows a steady decline in profits since 2012 with the shop finally closing in 2020. A letter has also been submitted with the application from the applicant's father setting out loans he has provided to support the shop between 2016 and 2020.
- 9.7. The applicant has responded to the Parish Council's comments and has advised, in summary, that:
- The property has been marketed in 2004, 2011 and 2019. There have been no second viewings or offers.
 - Trade generated by villagers since the opening of the Co-op is insufficient to support a commercial enterprise.
 - Changes to products and additional investment have not led to a sustained increase in shop use. There have been temporary short-lived increases in trade.
 - The Post Office contract is not a salary. It is a fixed fee and variable commission and costs including staff utility bills, alarm system and monitoring and rent have to be paid from it.
 - The contract belongs to the applicant not the premises. Anyone wanting to take over would be moved onto the new style commission-based contract.
 - The Post Office has agreed to an outreach Post Office when the applicant finishes. The Post Office would come to the village 2 – 3 times per week and the village would need to provide a room accessible to the public with a phone line to enable this.
 - Elderly and vulnerable reliant on the shop is a myth. Only one person uses the Post Office to pay bills but could do so through direct debit. The rest are either mobile or have supplies delivered and don't use or rely on the shop on a regular basis.
 - The opening of the Co-op put both Kirtlington and Weston on the Green shops at risk. There is insufficient trade for all three villages to have a shop. Kirtlington benefitted when the independent shop in Bletchingdon closed.

Officer assessment

9.7 In order to justify the loss of the shop contrary to Policy S29 and paragraphs 84 (d) and 93 of the NPPF a viability assessment is required setting out details of how the business operates currently, hours of operation, annual accounts from recent years and evidence that the property has been marketed at a reasonable price as a shop with for at least a 12 month period without success. It must be demonstrated that the shop as a service is non-viable rather than the particular business model used by the current or last operator. Such a detailed viability assessment has not been provided. However, evidence has been provided by an Estate Agent who has been marketing the property since April 2021. The estate agent states:

“Initially interest was strong, with 8 viewings in the first 3 weeks, but after that initial activity the interest has flatlined. By contrast, in the current climate around 80% of our stock is sold at any one time, and in almost every case each property is selling within 4 weeks of commencement of marketing.

Every enquirer we have fielded wanted to know why the store has closed, and legally we are bound to give them the truthful answer that it has not been financially viable in current form. At every viewing the viewers made it clear that they had no interest whatsoever in retaining any part of the property as commercial and would only be interested if the whole were residential. As at this moment, this is still the position”.

9.8. The applicant’s agent has been asked to investigate the division of the shop and residential use to enable a lock up shop to be retained. In response to this he has advised:

- If the shop is not financially viable in its current form it is unlikely to be viable in a much-reduced space which would be lacking any sort of adequate stock room.
- As a stand-alone shop there would be the requirement to provide separate W.C. and Staff facilities which would further reduce the space available for retail sales.
- If the shop and the residential accommodation are divided into two completely separate units they will fall in to different use classes under Building Regulations and will require significant upgrading for fire and sound insulation both laterally and vertically in order to comply. The ceiling heights to the ground floor are very low and would be further reduced by any insulation materials applied to the existing ceiling structure.
- The cost of the construction works necessary to achieve the separation would be out of all proportion to the unsatisfactory accommodation which would be the result.

9.9. The village has also been investigating the provision of a Community Shop in lieu of the existing shop. However, as stated by the Parish Council in their consultation response, such a venture was considered to be unviable on a risk/reward basis, and...that based on the reported financial and business models investigated, the project was concluded as being unsustainable.

9.10. Important to note is the following:

- The shop and post office served the basic needs of the local community; their loss would make the village inherently less sustainable as a settlement, and would not be sustainable development

- A detailed viability assessment (including full accounts) has not been provided; there is insufficient evidence to demonstrate the facility would not be financially viable in the long term
- The parish council response sets out clearly the various disbenefits of the proposal and other important factors

9.11 However, it is also important to note the following:

- The evidence tends to suggest that the viability of the business has been in decline over a number of years and that this is exacerbated by the opening of the nearby Co-op and Sainsbury's stores
- The investigation into a community run shop concluded that it would be unsustainable and unviable
- The investigation into the division of the premises to provide a separate residential unit and lock up shop indicates that this would result in an unviable business unit due to its size and the amount and cost of the works required to create it
- The evidence tends to suggest that the retention of the shop would not be sustainable development, though this evidence tends to focus on the existing enterprise rather than the facility itself

9.12. Overall, and on fine balance, and while the proposal conflicts with saved Policy S29 of the CLP 1996 as well as paragraphs 84 and 93 of the NPPF, and there is insufficient evidence to demonstrate that the shop would not be financially viable in the long term, officers conclude that neither retention nor loss of the shop unit would be sustainable development.

9.13. Notwithstanding the above, if the loss of the facility was determined to be acceptable, the use of the whole of the property for residential use could be supported in sustainability terms. The property is currently used as a shop on the ground floor with associated living accommodation on the two upper floors. Therefore, the proposal would not result in a net additional dwelling, and so the proposal would not result in any tangible public benefits. That said, the site is within the built limits of Kirtlington village, which is a Category A village under Policy Villages 1 of the CLP 2015 where the conversion of an existing buildings to residential can be acceptable in principle subject to other considerations and these are considered further below.

Design and impact on the character of the area

9.14. Paragraph 126 of the NPPF states that: '*Good design is a key aspect of sustainable development*' and that it '*creates better places in which to live and work*'. This is reflected in Policy ESD15 of the CLP 2015, which states that new development proposals should: be designed to improve the quality and appearance of an area and the way it functions...contribute positively to an area's character and identity by creating or reinforcing local distinctiveness...(and) respect the traditional pattern of routes, spaces, blocks, plots, enclosures and the form, scale and massing of buildings. In addition, Policy ESD15 states new development will be expected to complement and enhance the character of its context through sensitive siting, layout and high-quality design. All new development will be required to meet high design standards."

- 9.15. Saved Policy C28 of the CLP 1996 exercise control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context.
- 9.16. The proposed alterations to the front elevation are considered to be acceptable and the proposed window would match the size and form of the existing ground floor window in this elevation giving a consistent appearance to the building.
- 9.17. The rooflights require planning permission as the property does not currently benefit from permitted development for rooflights. The rooflights in the rear elevation would not be readily visible in public views due to the relationship with surrounding buildings and by reason of their siting would not result in any significant detriment to the visual amenities of the area.

Impact on heritage assets

- 9.18. The site is within Kirtlington Conservation Area and adjoins Grade II listed buildings.
- 9.19. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that in carrying out its functions as the Local Planning Authority in respect of development in a conservation area: special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
- 9.20. Likewise, Section 66 of the same Act states that: In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority...shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Therefore, significant weight must be given to these matters in the assessment of this planning application.
- 9.21. Conservation Areas and Listed Buildings are designated heritage assets, and Paragraph 199 of the NPPF states that: when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Policy ESD15 of the CLP 2015 echoes this guidance.
- 9.22. The proposed works are considered to preserve the character and appearance of the Conservation Area and whilst the building adjoins two Grade II listed buildings it is considered that the development would not result in any significant harm to the significance of the listed buildings by reason of change to their settings.

Residential amenity

- 9.23. The proposed alterations to the building would not result in any significant increase in overlooking or loss of privacy to the occupiers of the adjacent dwellings. The change of use from shop to a single dwelling could result in a reduction in noise and disturbance to the neighbouring dwellings.

Highway safety

- 9.24. The proposal seeks to convert the ground floor of the premises to living accommodation in conjunction with the existing residential use on the upper floors. The property does not benefit from any off-street parking.

- 9.25. The Local Highway Authority has recommended a condition requiring the provision of cycle storage/parking. However, this is considered to be unreasonable as there is already a residential unit on the site that doesn't benefit from such a facility and there would be no net change in the number of dwellings.

10. PLANNING BALANCE AND CONCLUSION

- 10.1. The overall purpose of the planning system is to seek to achieve sustainable development as set out in the NPPF. The three dimensions of sustainable development must be considered in order to balance the benefits against the harm. Section 38(6) of the Planning and Compulsory Act 2004 requires planning applications to be determined against the provisions of the development plan unless material considerations indicate otherwise.
- 10.2. For the reasons set out in this report, it is considered that whilst the proposal would result in the loss of a village service contrary to saved Policy S29 of the CLP 1996 and paragraphs 84 and 93 of the NPPF, and insufficient evidence has been submitted to demonstrate that the business would not be financially viable in the long term: there is significant circumstantial evidence to suggest that its retention would not be readily sustainable.
- 10.3. In addition, the proposed change of use and alterations to the building would not adversely affect the character and appearance of the Conservation Area or the setting of the adjacent listed buildings, nor will it result in any significant detriment to the living amenities of the neighbouring properties or to highway safety.
- 10.4. Therefore, on fine balance, it is recommended that permission is granted.

11. RECOMMENDATION

RECOMMENDATION – GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW:

Time Limit

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.
Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Compliance with Plans

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the application form and the following plans: 6168.01, 6168.02 A and 6168.04
Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework

Materials finishes detailing and design

3. All works of making good shall be carried out in materials and detailed to match the adjoining existing fabric except where shown otherwise on the approved drawings.
Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

4. Prior to the insertion of the window in the front elevation full design details of the window at a scale of 1:20 including a cross section, cill, lintel and recess detail and colour/finish, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the window shall be installed within the building in accordance with the approved details.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.