

Ward: Banbury Easington

District Councillor: Cllrs Blackwell, Mallon and Morris

Case Officer: Shona King

Recommendation: Approval

Applicant: Mr Peter Jordan

Application Description: Change of use to retail (funeral directors); erection of car port

Committee Referral: Member Request

1. Site Description and Proposed Development

- 1.1 The application site is part of a semi-detached building on the corner of Horton View and the access to the Horton View Sports Ground. It is set back from the highway with a parking area to the front. To the west is a further business use and to the east and immediately to the south are residential properties.
- 1.2 The authorised use of the premises is as an office and prior to this it was a retail unit.
- 1.3 The proposal is to change the use of the property to a retail use and to erect a car port to the side elevation. The applicant has advised that the proposed first occupier will be a funeral director.
- 1.4 The application was deferred from the Committee Meeting on 28 March 2013 to enable a formal site visit to take place.

2. Application Publicity

- 2.1 The application has been advertised by way of neighbour letter, site notice and press notice. The final date for comment was the 8th February 2013.

7 letters and a petition with 16 signatures have been received. The following issues were raised:

- 1) Incorrect description
 - 2) Parking
 - 3) Highway safety
 - 4) Questions publicity
 - 5) Inappropriate for the locality
 - 6) Impact on private property
 - 7) Use proposed is not retail and should be regarded as 'sui generis'. The application shouldn't be considered as a material change of use.
 - 8) The application should have been advertised as affecting a right of way.
 - 9) Process of calling an application in to committee.
- 2.2 The applicant has also submitted a letter to support the application. The comments are summarised as follows:
 - 1) Error in the description issued by the Council. The proposal is for a change of use back to retail.
 - 2) The business is to be run by a local professional
 - 3) It is to be small scale
 - 4) There will not be a service chapel on site
 - 5) Vehicles will not be assembled/parked for any great length of time
 - 6) 5 parking bays are to be provided on site

- 7) Funeral vehicles will be parked in private garages away from the site
- 8) Mourners will not gather at the premises. The cortege will depart to the family home where mourners will be collected or vehicles will travel directly to the venue of the funeral service.
- 9) The hearse will be prepared behind the privacy of the closed gates at the premises.
- 10) Aware that the Sports Ground car park is not a public car park
- 11) Any funeral vehicle will have no difficulty in either entering or leaving the site and will not obstruct the highway. Once the vehicle is inside the yard the gates will be closed ensuring total privacy. This also relates to a removal vehicle when bringing deceased into care at the premises.
- 12) Within the premises will be an open reception area, a private family consultation room, an office, a secure preparation area with cold storage facilities and a mourning suite for private viewings. This is within the boundaries of A1 retail use to which 20 Horton View has had for the large majority of its existence.
- 13) Unlikely that a funeral vehicle would leave the premises between 8am and 9am or between 3pm and 4pm when the gathering points outside the shop become active.

2.3 Attached as an appendix is a letter subsequently received from the applicant that addresses some of the points made by Cllr Mallon in his speech to Committee on 28 March 2013.

3. Consultations

3.1 Banbury Town Council: Original comments - No objections

Additional comments – The Town Council is responsible for the operation and management of the Horton View Sports Ground which is accessed from Horton View, alongside No. 20. The Town Council is concerned that funeral cars and other traffic associated with this business will seek to use the Sports Ground car park for parking and turning manoeuvres which will bring them into direct conflict with delivery lorries servicing the Sports Ground as well as other users.

The car parking area for the Sports Ground is already very busy and has to accommodate vehicles associated with the resident Bowls and Tennis Clubs as well as ad hoc hires for football and cricket. Grounds maintenance vehicles also need regular access to the site, and access for emergency services also needs to be kept clear. We do not believe it would be appropriate for funeral cars, particularly of the larger limousine type (with or without accompanying grieving relatives) to be thrown into this already fractious mix.

The Town Council asks that our serious concerns as an adjacent property owner are taken into account in determining this application and, if it cannot be resisted, that thought is given to whether or not any controls can be put in place through the planning system to prevent mis-use of the Horton View Sports Ground car park (or indeed the access road leading into it).

Oxfordshire County Council Consultees

3.2 Highways Liaison Officer: No objections. I have been given a copy of a letter of objection from the next door neighbour. Much of which expresses concern as regards the actual type of use and the number of school children likely to pass the site. There is one aspect which I have some sympathy that is the possibility of there being a cortege meeting here to go on to the funeral. I do not consider that this will be a problem to any significant degree however would it be feasible to condition a limitation on the numbers attending at any one time? I would suggest that as they can

accommodate within their frontage two perhaps three spaces without affecting others and if the limitation were to be set at that figure, on the rare occasions that this does happen it will not therefore cause a problem.

4. Relevant National and Local Policy and Guidance

4.1 Development Plan Policy

Adopted Cherwell Local Plan (Saved Policies)
C28: Layout, design and external appearance of new development

4.2 Other Material Policy and Guidance

National Planning Policy Framework

Cherwell Local Plan – Proposed Submission Draft (August 2012)

The draft Local Plan has been through public consultation and although this plan does not have Development Plan status, it can be considered as a material planning consideration. The plan sets out the Council's strategy for the District to 2031.

5. Appraisal

5.1 The key issues for consideration in this application are:

- Relevant planning history
- Principle of the development
- Highway safety
- Impact on the visual amenities of the area
- Impact on neighbouring properties

Relevant planning history

5.2 Planning permission was granted in 2000 for the change of use of the premises from greengrocer's shop to office/store – 99/02127/F

5.3 The description of the proposal on the application forms was 'change of use back to retail (funeral directors); erection of car port by side door to cover side yard' Unfortunately when registered and letters sent out to the public and consultees the description had been interpreted as 'change of use back to funeral directors; erection of car port'.

Principle of the development

5.4 The proposed development is a change of use application. A funeral directors' falls within Use Class A1 (retail) of the Town and Country Planning (Use Classes) Order 1987 (as amended). It has been questioned in the representations made regarding the application that this is not the case and that a funeral directors is a 'sui generis' use, that is one that does not fall within any particular use class.

5.5 Whilst officers consider the application to involve the change of use to A1(retail) this is still a material change of use and the same planning issues are taken into consideration as if the application were for a defined 'sui generis' use, such as:

- impact on the living amenities of neighbouring properties,
- highway safety,
- adequacy of the parking provision,
- compatibility with the immediate surroundings

- 5.6 The proposed change of use to retail from an office and store is considered to be acceptable in this location. The premises has been in commercial use for a considerable time and there are other retail uses in the immediate vicinity.

Highway safety

- 5.7 The Highway Authority is satisfied that the proposed change of use to retail (A1) will not result in any significant detriment to highway safety. Circumstances have not changed significantly in the area since the premises was last used for retail purposes and there is an improvement proposed to the off-street parking area to the forecourt.
- 5.8 As the end user is known, a funeral director, restricting the number of vehicles in a cortege to ensure that the traffic congestion associated with the use is limited could be considered reasonable. In this instance a condition is recommended restricting the number of vehicles in any corteges leaving the premises to two vehicles in addition to the hearse. There are two full sized parking spaces on the forecourt of the site which will mean that all vehicles associated with the cortege could be parked without obstructing the highway.

Impact on the visual amenities of the area

- 5.9 The proposed change of use will not result in any detriment to the visual amenities of the area. The car port to be erected to the side elevation will be largely screened by the 2m high fence and gates around the boundary of the site and is to be set back slightly from the front elevation of the premises.

Impact on neighbouring properties

- 5.10 The premises are currently in commercial use and the proposed change of use will not result in any significant detriment to the living amenities of the neighbouring residential properties. There has not been any material change in circumstances since the premises were last used for retail purposes.
- 5.11 The proposed car port to the side elevation will not adversely affect the living amenities of the occupiers of neighbouring properties by way of overshadowing or overbearing due to its height and design. The relationship with the dwelling immediately to the south, No. 20A, is such that it will not result in any significant loss of light to that property or be overbearing on its outlook.
- 5.12 Vehicles bringing the deceased to the premises can park within the drive to the side of the premises. The 2m high fence around the site boundary and proposed car port will restrict views of the vehicles and deceased.

Other issues

- 5.13 The publicity for the application was carried out in accordance with the legislation requirements for this type of application. Immediate neighbours were notified of the proposal by letter.
- 5.14 It has been questioned in the representations that the application should have been advertised as affecting a right of way. The application site and proposal does not affect the right of way or highway to require advertisement as the development does not involve alterations to the right of way/highway or development on the line of the right of way/highway.
- 5.15 A representation has been made questioning the process of asking for an application

to be considered by the Committee. This application falls within the category which is normally delegated. However in certain circumstances, such as significant public interest, the Ward Members can seek the agreement of the Chairman and the Head of Public Protection and Development that the application can be determined by the Planning Committee. The application was called in for determination by Members following the correct procedures.

Engagement

- 5.16 With regard to the duty set out in paragraphs 186 and 187 of the Framework, no problems or issues have arisen during the application. It is considered that the duty to be positive and proactive has been discharged through the efficient determination of the application.

Conclusion

- 5.17 It is considered that the development will not result in any significant detriment to highway safety, the visual amenities of the area nor the living amenities of neighbouring properties.

6. Recommendation

Approval, subject to the following conditions:

1. That 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.
2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: Application Forms, location plans 01 and 02, plan nos. 01 and 02 and block plan 03.
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.
3. That any corteges to and from the premises shall be restricted to two vehicles in addition to the hearse.
Reason – In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework

SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

The Council, as Local Planning Authority, has determined this application in accordance with the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the proposal pays proper regard to the character and appearance of its surroundings and has no undue adverse impact upon the visual amenities of the area, the living amenities of neighbouring properties nor upon highway safety. As such the proposal is in accordance with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework. For the reasons given above and having proper regard to all other matters raised the Council considered that the application should be approved and planning permission granted subject to appropriate conditions as set out above

STATEMENT OF ENGAGEMENT

In accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No 2) Order 2012 and paragraphs 186 and 187 of the National Planning Policy Framework (March 2012), this decision has been taken by the Council having worked with the applicant/agent in a positive and proactive way as set out in the application report.