

**3 Oxford Road,  
Kidlington,  
OX5 2BP**

**15/00688/F**

**Ward:** Kidlington South

**District Councillor:** Cllrs Billington,  
Griffiths and Prestidge

**Case Officer:** Stuart Howden

**Recommendation:** Approval

**Applicant:** Off The Hook

**Application Description:** Alterations to front elevation including insertion of new openings, erection of brick chimney to roof ridge, installation of extract flue and change of use of premises from Class A3 to Class A5 (Fish and Chip Shop)

**Committee Referral:** Public Interest

**Committee Date:** 09.07.2015

## **1. Site Description and Proposed Development**

1.1 3 Oxford Road is situated within the middle of a terrace building and the unit fronts Oxford Road and is located within the centre of Kidlington. The two storey unit has consent as an A3 use (restaurants and cafes), but the unit is currently vacant. A division has been created at ground flood level separating the vacant space from the existing café (Café Nefis) on the eastern half of the ground floor, but the lawful use of the site is A3. An A5 use (hot food takeaway) is situated next door but one to the site, on the east side to Café Nefis. The site is not within a Conservation Area and there are no listed buildings within close proximity to the site.

1.2 Planning permission is sought for the change of use of the unit from an A3 use to a Fish and Chips Chop (A5 use). The internal layout proposes the provision of the frying counter and serving area at ground floor level with food preparation, stores and staff facilities at first floor level. External alterations are proposed as a result of the proposed change of use. These proposed external alterations include:

- A wider customer entrance door on the front elevation;
- A larger window on the front elevation;
- A replacement chimney on the western end of the building at a height of approximately 1 metre; and
- An extraction duct from the kitchen that would project through the rear roofslope by approximately 2 metres. This would be sited behind the proposed replacement chimney;

## **2. Application Publicity**

2.1 The application has been advertised by way of site notice. The final date for comment was the 4<sup>th</sup> June 2015. A petition with 727 signatures has been received objecting to the application. The reason for objecting to the application is due to opposition to business competition.

8 letters of objection have also been received and the issues raised within these letters are summarised below:

- Other tenants have looked at the site;
- The proposed use would not enhance the vitality or viability of Kidlington centre;

- Kidlington has enough Fish and Chip shops;
- Opposition to business competition.

### 3. Consultations

3.1 Kidlington Parish Council: object to the application of the following grounds:

*“Of there being NO parking provision for this application. [Saved Policy] TR5 of the [adopted] Cherwell Local Plan 1995 details:*

*‘Development likely to attract vehicular traffic will normally be required to:*

- 1) Accommodate within the site the necessary highway-safety requirements relating to access, turning, servicing and parking provision; and*
- 2) Include appropriate measures to minimise the visual impact of vehicles and any parking areas.”*

#### **Cherwell District Council Consultees**

3.2 Nuisance Investigation Officer: *“The report recommends an Electrostatic Precipitator ESP3000 configuration with a UV-O500 2 lamp Ozone system which is fine but does the applicant accept to propose to install the plant? That’s not clear within the application. I recommend the second part of my suggested condition be imposed together with a condition on height of flue, namely:*

- 1. The extract ventilation and filters shall be installed in accordance with the scheme proposed by Purified Air submitted with the application before the development is brought into use and maintained in accordance with the approved scheme thereafter.*
- 2. The height of the extract discharge flue shall terminate at least one metre above the height of the eaves of the building to which the extract flue is attached or one metre above the height of any openable window of a habitable room within 5 metres of the flue, whichever is the greater height.”*

3.3 Ecology Officer: *“The alterations are largely to the exterior ground floor of the property or exterior for ducting attached to the building. The rebuilding of the chimney looks to be more as a masking façade and therefore as far as I can tell does not disturb the roof void itself and is unlikely to involve removal of many tiles. Given this I think it is fairly unlikely that the works will disturb bats even if any are present and therefore I have no concerns on ecological grounds.”*

#### **Oxfordshire County Council Consultees**

3.4 Highways Liaison Officer: No objections.

#### **Other Consultees**

3.5 None.

### 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 |
| C31: | Compatibility of proposals in residential areas           |

- S21: Development in Kidlington shopping centre  
ENV1: Development likely to cause detrimental levels of pollution

#### 4.2 Other Material Policy and Guidance

##### National Planning Policy Framework

##### Planning Practice Guidance (2014)

##### Submission Cherwell Local Plan (2015)

Submission Local Plan (2015) (SLP) has been through public consultation and was submitted to the Secretary of State for examination in January 2014, with the examination beginning in June 2014. The Examination was suspended by the Inspector to allow further work to be undertaken by the Council to propose modifications to the plan in light of the higher level of housing need identified through the Oxfordshire Strategic Housing Market Assessment (SHMA), which is an objective assessment of need. Proposed modifications (August 2014) to meet the Objectively Assessed Need were subject to public consultation, from 22nd August to 3rd October 2014. Although this plan does not have Development Plan status, it can be considered as a material planning consideration. The examination reconvened and closed in December 2014 and the Inspectors Report was published on 12<sup>th</sup> June 2015.

The policies listed below are considered to be material to this case and are not replicated by saved Development Plan Policies:

- SLE2: Securing Dynamic Town Centres  
ESD16: The Character of the Built and Historic Environment  
Policy Kidlington 2: Strengthening Kidlington Village Centre

##### Cherwell District Council: Shop fronts and advertising guidance (2002)

##### Kidlington Village Centre Health Check (2007)

### 5. Appraisal

5.1 The key issues for consideration in this application are:

- Relevant Planning History;
- The Principle of the Change of Use;
- Visual Amenities;
- Environmental Concerns;
- Highways Safety;
- Ecological Impact;
- Other Matters.

#### **Relevant Planning History**

- 5.2 98/01817/F - Change of use from bookmakers to Class Use A1 (shops) – Permitted.
- 5.3 98/01818/F – Change of use from bookmakers to Class Use A3, restaurant (excluding take away food) – Refused.
- 5.4 02/00830/F – Enlarge kitchen area to commercial deli – Permitted.
- 5.5 04/01052/F – Change of use to restaurant seating area – Permitted.

- 5.6 An application for advertisement consent has been submitted alongside this planning application (see 15/00689/ADV).

### **The Principle of the Change of Use**

- 5.7 Paragraph 6 of the NPPF states that, “The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system. The NPPF goes on to say that, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. Section 2 of the NPPF highlights that Local Planning Authorities should ensure the vitality of town centres.
- 5.8 The site is located within Kidlington Shopping Centre, identified in the 1996 adopted Cherwell Local Plan (ACLP), albeit on the edge of its designation. Saved Policy S21 of the ACLP states that: *‘Development proposals in the Kidlington Shopping Centre...that maintain and enhance the vitality and viability of the central shopping area will normally be permitted’*. In the notes supporting this policy it is also stated that: *‘Changes of use at ground floor level to non retail uses (i.e. those not in Classes A1 or A3 of the Town and Country Planning (Use Classes) Order 1987) will not be permitted where they would undermine the vitality and viability of the central shopping area’*. Although takeaways were included in the A3 classification when the Local plan was adopted (A5 was added following an amendment to the Use Class Order in 2005), it is accepted that an over proliferation of non-A1 activities could potentially have a detrimental impact upon the central shopping area. In addition to this, Paragraph 4.75 of the ACLP notes that proposals for hot food takeaway shops in the existing central shopping areas of Banbury, Bicester and Kidlington will normally be acceptable.
- 5.9 The more recent Submission Cherwell Local Plan (SCLP) also identifies the site as being within Kidlington Centre. Policy Kidlington 2 of the SCLP states that *“Shopping, leisure and other ‘Main Town Centre Uses’ will be supported within the boundary of Kidlington Village Centre”*. The NPPF defines ‘Main Town Centre Uses’ as retail, leisure, entertainment facilities the more intensive sport and recreation uses, offices, arts and tourism development. In this definition, the NPPF states that entertainment facilities and recreation uses include: *‘cinemas, restaurants, drive-through restaurants, bars and pubs, night-clubs, casinos, health and fitness centres, indoor bowling centres, and bingo halls’*. The NPPF does not refer to hot food takeaways in this category, even though such a use shares similarities with some of the uses in the list (for example in terms of operations and opening times). However, the definition in the NPPF refers to ‘including’ and does not say ‘only’. Officers are therefore of the opinion that a hot food takeaway is a ‘Main Town Centre Use’ as defined by the NPPF. It is also questionable whether there is a more appropriate siting for such a use rather than in a town centre.
- 5.10 As part of the Kidlington Village Centre Health Check 2007, an analysis of shopper movements was conducted. This displays the pre-eminence of the High Street in respect of pedestrian movements during the day and in contrast the effect the public houses (Black Horse, Black Bull and the Red Lion) on Oxford Road and Banbury Road have on night time movements.
- 5.11 As the number of shoppers passing 3 Oxford Road is limited, officers are of the opinion that it could not be argued that this row of units on Oxford Road form part of Kidlington’s primary shopping front.
- 5.12 The applicant has not submitted supporting evidence in relation to the marketing of this unit. However, the proposed use is a ‘Main Town Centre Use’ as defined by the NPPF and the unit is within a secondary position in Kidlington’s Shopping centre, and therefore it is considered that the proposed use would not undermine the vitality and function of

Kidlington Centre. There are however, other material planning considerations which are discussed below.

### **Visual Amenities**

- 5.13 Government guidance contained within the NPPF requiring good design states that good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. Further, permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions.
- 5.14 Saved Policy C28 of the adopted Cherwell Local Plan exercises control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context.
- 5.15 The wider customer entrance door and larger window are considered to be minor changes that would have a negligible visual impact. The proposed extension to the chimney is also considered to be a minor change that would have a negligible impact upon the visual amenities of the locality, but would also contribute in screening the proposed extraction duct from the public domain. Whilst the chimney would not fully screen views of the extraction duct, the duct is not considered to be a visually prominent feature from the streetscene given its siting on the rear roofslope behind the proposed chimney extension and because of its proposed scale. For the above reasons, the proposed external changes are acceptable

### **Environmental Concerns**

- 5.16 Saved Policy ENV1 of the adopted Cherwell Local Plan states that development which is likely to cause materially detrimental levels of noise, vibration, smell, smoke or other type of environmental pollution will not normally be permitted.
- 5.17 Paragraph 4.73 of the ACLP notes that hot food takeaways have the potential to cause nuisance to nearby residential units due to cooking activity. Paragraph 4.76 of the ACLP states that in considering applications for hot food takeaway establishments, the Council will need to be satisfied that the method of mechanical ventilation of the cooking area is of a type and standard that will ensure that emissions are deodorized prior to their discharge to the atmosphere.
- 5.18 There are no residential properties above or next door to the unit. In addition, the Nuisance Investigation Officer has no objections to the proposal in principle. The Nuisance Investigation Officer recommends a condition stating that the extraction ventilation and filters shall be installed in accordance with the plans submitted with the application and that this is installed before the first use of the building as an A5 use. This has been recommended as a condition in order to minimise odours within the vicinity of the site and to prevent detrimental harm to any residential properties in terms of nuisance. In addition, the Nuisance Investigation Officer has recommended a condition stating that: *“the height of the extract discharge flue shall terminate at least one metre above the height of the eaves of the building to which the extract flue is attached or one metre above the height of any openable window of a habitable room within 5 metres of the flue, whichever is the greater height.”* This again has been recommended as a condition for the same reasons as the other condition. Given the above, it is considered that the proposal would not cause detrimental harm to any properties in terms of nuisance, nor would the proposal cause materially detrimental levels of odour.

### **Opening Hours**

- 5.19 Hot food takeaways have the potential to cause nuisance to nearby residents due to general activity, particularly during the late evening. Paragraph 4.74 of the ACLP

advises against restricting the opening hours of takeaway establishments located in areas that are predominantly residential to generally accord with the opening hours of licenced premises. Paragraph 4.75 of the ACLP notes that proposals for food takeaways in the existing central shopping area of Kidlington will normally be acceptable without restriction on hours of opening unless the proximity of an existing residential property is such that such a restriction would be justified in order to protect residential amenity. When looking at nearby existing takeaways (not all in the Kidlington Shopping Centre), it is clear that these stay open after the traditional pub closing time (11pm) (please see below).

Take-Away	Closing Time		
	Thursday	Friday	Saturday
Sami's (3a Oxford Road)	Midnight	1am	1am
The New Star (6 Oxford Road)	11.00pm	Midnight	Midnight
Domino's Pizza (67 High Street)	11.00pm	Midnight	Midnight
Rainbow Takeaway (61 High Street)	11.00pm	11.00pm	11.00pm
<b>Restaurant / Take-Away</b>			
Ovisher (11-13 Oxford Road)	11.30pm	Midnight	Midnight
Tiffin's (63 High Street)	Midnight	Midnight	Midnight

- 5.20 The site is located within the Kidlington Shopping Centre and there are no residential properties above the unit or directly next door to the unit, and Sami's (a takeaway) is located next door but one to the proposed site and is open until relatively late. The applicant's agent notes in the statement supporting the application that the applicant does not expect to be open later than 10.30pm in order to minimize the potential for disturbance at unsociable hours. For the reasons above it is considered that it would be reasonable to restrict the opening hours to require closure at midnight to prevent disturbances at unsociable hours. Subject to this aforementioned condition, it is considered that the proposed use would not cause detrimental harm to residential properties in terms of noise, in accordance with saved Policies C31 and ENV1 of the adopted Cherwell Local Plan and Government guidance contained within the NPPF.

### Highways Safety

- 5.21 The Local Highways Authority have no objections to the application on the grounds of highway safety. Kidlington Parish Council have objected to the proposal on the basis of there being no parking provision for the proposed use and the Parish Council have referred to Policy TR5 Cherwell Local Plan 1996. However, Policy TR5 is no longer in use. Given that the site is within the Kidlington Centre, which is well connected to public transport, the Local Highways Authority and officers consider that on-site parking is not necessary in this instance. Off-street parking is available in a lay-by nearby to the south and in the main village centre car parks. It is considered that the proposal would not have a detrimental impact upon highway safety in accordance with Government guidance contained within the National Planning Policy Framework.

### Ecological Impact

- 5.22 The Ecology Officer has no objections to the proposal and is of the opinion that the works proposed will not disturb bats even if any are present. It is therefore considered that the proposal would not cause detrimental ecological harm.

### Other Matters

- 5.23 Third parties have raised objections to the proposal on the grounds of business competition, but opposition to business competition is not a material planning

consideration in this case.

## Engagement

- 5.24 With regard to the duty set out in paragraphs 186 and 187 of the Framework, no problems or issues have arisen during the application. The agent was made aware of the recommended conditions and has no objections to these. The application has exceeded the target determination date due to being referred to planning committee.

## Conclusion

- 5.25 The principle of the development is considered acceptable and it is considered that the proposal would not cause detrimental harm to the visual amenities of the locality. The proposal is also considered not to have an adverse impact upon the neighbour amenity, highway safety or ecology and the proposal is therefore considered compliant with the policies outlined in section 4 of this report. Overall, the proposal is considered to have no significant adverse impacts, therefore the application is recommended for approval and planning permission should be granted subject to appropriate conditions.

## 6. Recommendation

**Approval**, subject to the following conditions:

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.

2. Except where otherwise stipulated by condition, the application shall be carried out strictly in accordance with the following plans and documents: Application Forms, Cover Letter from applicant's agent dated 15<sup>th</sup> April 2015 (JPPC ref: AJG/6228) and Drawing Number 01D submitted with the application.

Reason - For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with Government guidance contained within the National Planning Policy Framework.

3. The hours of opening of the premises shall be restricted to the following times:-

Monday-Friday – 10am to 12.00pm (Midnight)  
Saturday – 10.30am to 12.00pm (Midnight)  
Sunday and Public Holidays – 10.30am to 12.00pm (Midnight)

Reason - In order to safeguard the amenities of the area and to comply with Policies C31 and ENV1 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

4. The extract ventilation and filters shall be installed in accordance with the scheme proposed by Purified Air (dated 17<sup>th</sup> February 2015) submitted with the application before the first use of the operation hereby approved and maintained in accordance with the approved scheme thereafter.

Reason - In order to minimise the risk of a nuisance arising from smells and to

ensure that any concentration of air pollutants in the vicinity is minimised in accordance with saved Policies C31 and ENV1 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

5. The height of the extract discharge flue shall terminate at least one metre above the height of the eaves of the building to which the extract flue is attached or one metre above the height of any openable window of a habitable room within 5 metres of the flue, whichever is the greater height.

Reason - In order to minimise the risk of a nuisance arising from smells and to ensure that any concentration of air pollutants in the vicinity is minimised in accordance with saved Policies C31 and ENV1 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

### **PLANNING NOTES**

1. Bats are a highly mobile species which move between a number of roosts throughout the year. Therefore all works must proceed with caution and should any bats be found during the course of works all activity in that area must cease until a bat consultant has been contacted for advice on how to proceed. Under the Wildlife & Countryside Act 1981 (as amended) and the Habitat and Species Regulations 2010 it is illegal to intentionally or recklessly disturb, harm or kill bats or destroy their resting places.
2. Planning permission only means that in planning terms a proposal is acceptable to the Local Planning Authority. Just because you have obtained planning permission, this does not mean you always have the right to carry out the development. Planning permission gives no additional rights to carry out the work, where that work is on someone else's land, or the work will affect someone else's rights in respect of the land. For example there may be a leaseholder or tenant, or someone who has a right of way over the land, or another owner. Their rights are still valid and you are therefore advised that you should seek legal advice before carrying out the planning permission where any other person's rights are involved.

### **STATEMENT OF ENGAGEMENT**

In accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015 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.