

Bicester Furniture Studio
24 Church Street
Bicester
OX26 6AZ

15/01724/F

Case Officer: Gemma Magnuson **Ward(s):** Bicester Town

Applicant: Papa John's (GB) Ltd

Ward Member(s): Cllr D M Pickford, Cllr Richard Mould

Proposal: Change of Use from a Shop (Use Class A1) to a Hot Food Takeaway (Use Class A5) with internal and external alterations

Committee Date: 26.11.2015 **Recommendation:** Application Refused

Committee Referral: Member Request – Cllr Pickford

1. Application Site and Locality

1.1 The application relates to a vacant A1 retail unit south-west of Bicester town centre that was formerly occupied by Bicester Furniture Studio. The building is not listed, although the adjoining building to the south-east, Tudor Cottage, is Grade II listed. Grade II listed buildings are situated across the road from the site, including Grade II* listed The Old Vicarage to the south-east. Grade II listed Presentation Convent is situated to the north-west. The site is in the Conservation Area. Protected and notable species the Pipistrelle Bat, Long-eared Bat, Common Swift and West European Hedgehog have been identified in the area.

2. Description of Proposed Development

- 2.1 The development would involve the change of use of the unit from A1 retail to an A5 hot food takeaway. The application documents indicate that the end user would be Papa Johns, a take away and pizza delivery operator.
- 2.2 The building would not be extended in order to accommodate the new use, although the ground floor would be reconfigured and the shop front altered in order to create an entrance to the side rather than a central entrance. The shop front would be constructed using aluminium frames that are dark green in colour. A flue be installed within the roof of a single storey element to the rear, and a condenser unit would be positioned at low level on the rear elevation of the single storey element. The residential flat at first floor level would be retained as existing. The garage would be used to store waste and delivery scooters.
- 2.3 Proposed opening hours are 11am to 11pm Sunday to Thursday and Bank Holidays, and 11am to 1am on Friday and Saturday. The applicant intends to receive deliveries via Church Street, and they anticipate these occurring three times a week for a maximum of 20 minutes during each visit.
- 2.4 Signage has not been included on the current application and may be the subject of an application for Advertisement Consent, if required.
- 2.5 The applicant anticipates that the majority of customers will place orders and request deliveries to their homes, or other venues; a pattern that is observed at other stores within the

UK (on average 63% of orders are delivered). A high proportion of collections will also be made after 6pm. All products are oven baked rather than deep fried.

3. Relevant Planning History

<u>App Ref</u>	<u>Description</u>	<u>Status</u>
03/02128/F	Demolition of existing shop and erection of 1 No. three storey house and 2 No. flats (as amplified and amended by plans received 26.11.03 and 09.12.03 and agent's letter dated 25.11.03).	PER
03/02129/CAC	Demolition of existing shop.	PER

4. Response to Publicity

4.1 The application has been advertised by neighbour letter, press notice and site notice. The final date for comment was 29 October 2015. 23 responses were received, the issues raised have been summarised as follows: (please refer to electronic file for full versions available via the website www.cherwell.gov.uk)

- Unsocial opening hours
- Noise/disturbance until late, opening hours to 1am are not suitable for this street which is largely residential, people loitering outside
- Additional traffic – congestion, noise from vehicles, lack of residents parking, no spare parking in Church Street, safety issues for pedestrians and cyclists
- Residents already compete with people looking to avoid parking charges in the town, residents have asked for residents parking on numerous occasions to no avail
- Unsightly garish frontage, neon signage – out of keeping with Conservation Area and setting of nearby listed buildings
- More litter/human excrement
- Church Street is one of prettiest and most popular with tourists
- There are alternative locations in the town centre – would be better located in the town
- Papa Johns Pizza business does not have a local character. Bicester needs to support its own local business rather than import American style international business
- Large delivery lorries will be stopping on road outside, it is on a bend and lorries will restrict view of passing traffic, car already drive round the bend too fast
- Lorries unable to stop in parking area opposite as cars park here day and night
- More pedestrians will be accessing the building – narrow pavement to west where people already need to step off road to let others pass
- Conservation Area impact – should protect and preserve oldest parts of Bicester
- Take away pizza business is out of keeping with character within Conservation Area and setting of listed buildings that form the core of our ancient market town
- Signage detail has not been provided but will inevitably include neon signage. Nearby restaurants have retained their original frontages.
- Already many take away businesses in The Causeway and Market Square – there is adequate parking in Market Square but none to spare in Church Street. Existing takeaways cause nuisance by people drinking and buying food late at night then discarding litter
- Already two restaurants in Church Street resulting in a lot of coming and going at lunch time and in the evening, a take away pizza would add to this
- Swift nesting areas in close proximity to the site, pollution and noise would disturb swifts
- Odour nuisance – extractors of existing restaurants still create smells
- Inadequate neighbour consultation for application
- The previous business was very unobtrusive

- Parking on the road opposite the car park is unrestricted after 6pm meaning the road is restricted in width in the evenings
- Site is opposite a junction leading to a primary school
- The existing A1 use would not have generated the same volume of traffic
- Whilst it is accepted that the rear of the site is not open to public view, little consideration has been given to the extract flue penetrating through the building
- The Market Square and streets leading up to it are dominated by similar units at the expense of retail use, consideration should be given to retain A1 use to retain commercial diversity within the town
- Wish to correct Design and Access Statement – there are no on-street parking bays opposite Piccolo Amore (formerly Six Bells PH) but there is limited and vary narrow parking space immediately outside Piccolo Amore
- The pavement is narrow and space is taken up by pushchairs, wheelchairs and motorised scooters for the elderly forcing pedestrians into road
- Fails to meet requirement of Bicester 5 of Cherwell Local Plan 2011-2031 as it would not enhance the Conservation Area and would not improve the character and appearance of the centre of Bicester
- Flue would be too close to the thatched roof of adjacent property – odours could be absorbed into roof thatch
- Detrimental to residents and businesses already on Church Street
- Previous furniture shop did most of its business on the internet so didn't cause much traffic – a take away would be substantially different to this former use
- Church and graveyard will become a focal point for late night al-fresco dining
- Business is not sustainable with sufficient pizza and other fast food takeaways in Market Square
- Fast food industry uses huge volumes of needless and wasteful packaging – thrown away after less than 5 minutes use, limited landfill space, limited supply of petroleum, loss of trees, replacement of natural forests with monoculture plantations, dangerous chlorine compounds use to bleach paper, ozone depletion, greenhouse effect, do not recycle
- Area does not need more fast processed food outlets, would be better to have other kinds of shops such as family businesses, bakeries and those selling fresh produce
- Promotion and sale of unhealthy food, particularly to children – the location is within 100m of a primary school and 500m of the towns main secondary school
- The decibels given for the fan mentioned range from inlet 66-93db and outlet 70-95db with the higher range being the same as a petrol lawn mower
- The cold storage to the rear of the property will have a condenser to the exterior wall again more noise from the fan and constant switching on and off 24 hours per day, the scheme E document states no noise and odour which is questionable
- Grease filters are installed in the extraction unit and rely on the staff to be cleaned, doubt over whether this would be done, if not odour will increase and effect residents in the area
- Having ovens next to a thatch property is a danger
- Council should be trying to preserve attractive buildings
- Many empty premises in the town where there would be parking for customers
- Detriment to residential amenity
- Negative impact on patients ability to relax when visiting nearby clinic
- Customers are likely to block driveway due to lack of parking on Church Street – driveway is used for visiting disabled patients
- Complaints regarding position of site notice, lack of neighbour letters and inability to submit comments using computer
- This is an oasis of architectural history surrounded by an ever increasing circle of new buildings and concern that this could be lost
- Adversely affect house values

5. Response to Consultation

5.1 Bicester Town Council: object to the application as the wrong site for this type of business. This is a busy and fairly narrow through fare and there will inevitably be customers parking directly outside the shop creating traffic concerns and nuisance to neighbouring properties. Bicester Town Council would welcome the business but not necessarily in this location.

5.2 Cherwell District Council Scientific Officer: I have no objections to this proposal conditional upon the extract system and plant being installed and maintained to the standard (or better) as specified in the statements supporting the application.

5.3 Cherwell District Council Ecology Officer: There are several records of swifts nesting in this street including next door to this property at number 26, so even if not nesting at this property they should be considered. Swifts are legally protected (as are all birds) from disturbance whilst nesting until the last young has fledged. Outside of the nesting season strictly the nest sites are not protected whilst not in use however because swifts return to the same nesting site year after year it is good practice to retain nesting sites where possible or offer an alternative.

As regards the installation of the flue I would recommend a condition is included such that this is undertaken outside of the swift nesting season (April to August inclusive) to avoid the chance of disturbing any nesting birds on the building or adjacent.

As regards the operational disturbance from noise etc. I don't know how much noise the flue is likely to emit (I'm not sure it would help if I did as I don't know what levels a swift will tolerate) but I think it is relatively unlikely that it would disturb a nesting swift on an adjacent building (although it could dissuade it from returning if it was very noisy).

Should permission be granted I would suggest a condition to enhance the building for swifts (addition of a box or two) in consultation with Swift Conservation. Should the local coordinator for Swift Conservation advise that there is nowhere suitable to install a box, a nesting box for another bird species (e.g. house sparrow) could be used.

5.4 Cherwell District Council Conservation Officer: no response at time of writing.

5.5 Oxfordshire County Council Highway Authority: This site is located within a tortuous section of public highway where the road narrows and footway provision is quite limited. The frontage of this site is located within a particularly poor section of this highway where the awareness of oncoming vehicles is very limited particularly to the north – west.

The use proposed is likely to generate significant usage both with regards to deliveries from the site and vehicles and individuals visiting the site. There are some limitations/controls on parking in the vicinity. The area which is public highway includes that opposite the site up to the frontage of the buildings, an area which is heavily utilised by existing uses.

The site is within a speed controlled area quite close to the town centre. During my assessment of the proposals I had some regard to the actual passing speed of traffic in the vicinity of the site.

H.A. is concerned at the lack of awareness as mentioned above and considers that there is a cause for concern given the nature of the use proposed, accordingly a recommendation of refusal is offered for consideration.

Recommend that the application be refused for the following reason. That movements generated as a product of this proposal will represent an increased hazard in the vicinity resulting in a detriment to the safety and convenience of other road users.

6. Relevant National and Local Planning Policy and Guidance

6.1 Development Plan Policies:

The Cherwell Local Plan 2011-2031 Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 Part 1 replaced a number 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. Planning legislation requires planning decisions to be made in accordance with the Development Plan unless material planning considerations indicate otherwise. The relevant planning policies of Cherwell District's statutory Development Plan are set out below:

Cherwell Local Plan 2011 - 2031 Part 1

SLE2 – Securing Dynamic Town Centres
BIC5 - Strengthening Bicester Town Centre
ESD10 - Protection and Enhancement of Biodiversity and the Natural Environment
ESD15 - The Character of the Built and Historic Environment

Cherwell Local Plan 1996 (Saved Policies)

C28 - Layout, design and external appearance of new development
C31 - Compatibility of proposals in residential areas
ENV1 - Development likely to cause detrimental levels of pollution

6.2 Other Material Planning Considerations:

National Planning Policy Framework ("the Framework") - National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied.

Planning Practice Guidance ("nPPG") – This sets out regularly updated guidance from central Government to provide assistance in interpreting national planning policy and relevant legislation.

7. Appraisal

7.1 Officers' consider the following matters to be relevant to the determination of this application:

- Principle of Development;
- Impact on Heritage Assets and Visual Impact;
- Accessibility, Highway Safety and Parking;
- Effect on Neighbouring Amenity;
- Ecological Implications;

Principle of Development

7.2 The acceptability of the principle of the change of use of this A1 retail unit to an A5 hot food take away stands to be considered against Government guidance contained within the Framework and Policies Bicester 5 and SLE 2 of the Cherwell Local Plan 2011-2031.

- 7.3 The Framework advises that the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Further, planning should operate to encourage and not act as an impediment to sustainable growth, and significant weight should be placed on the need to support economic growth through the planning system. With regard to town centres, it advises that it is important that needs for retail, leisure, office and other main town centre uses are met in full and are not compromised by limited site availability. Where town centres are in decline, local planning authorities should plan positively for their future to encourage economic activity.
- 7.4 Main town centre uses are defined as retail development (including warehouse clubs and factory outlet centres), leisure, entertainment facilities the more intensive sport and recreation uses (including cinemas, restaurants, drive through restaurants, bars and pubs, night-clubs, casinos, health and fitness centres, indoor bowling centres and bingo halls), offices, and arts, culture and tourism development (including theatres, museums, galleries, concert halls, hotels and conference facilities).
- 7.5 Policy SLE 2 of the Cherwell Local Plan 2011-2031 states that retail and other main town centre uses will be directed towards the town centre of Bicester in accordance with Policy Bicester 5. The Council will apply the sequential test set out in the Framework, whereby proposals for retail and other main town centre uses not in town centres should be in edge of centre locations. When considering edge of centre and out of centre proposals, preference will be given to accessible sites that are well connected to the town centre. The Council will consider if the proposals satisfy the sequential test and if they are likely to have a significant adverse impact on one or more the factors in the Framework.
- 7.6 Policy Bicester 5 of the Cherwell Local Plan 2011-2031 seeks to strengthen Bicester town centre and states that shopping, leisure and other main town centre uses will be supported within the centre. Only A1 and A3 uses will be permitted on the ground floor in the primary shopping frontage. The Council will review the town centre boundary through the Local Plan Part 2, but prior to this, retail and other town centre uses will only be supported with and Area of Search if they form part of new schemes which help deliver the aims for central Bicester. Development should have particular regard to enhancing the character of the Conservation Area.
- 7.8 An A5 hot food takeaway use is not specifically defined in the Framework as a main town centre use. The site is not within the current town centre boundary although it is within the Area of Search. The development would lead to the loss of a ground floor A1 retail unit, although as the site is not within the Primary Shopping Frontage, and is currently vacant, this is considered acceptable. Whilst an A5 use is not a main town centre use, due to the requirement for people to travel to and from the premises, it is considered to represent an appropriate edge of centre use, being sustainably located within short walking distance of the town centre, residential properties and other employment generating uses, and benefitting from good public transport links. The existing night time economy within the town centre is also likely to support the use of the unit as an A5 hot food take away and the change of use is likely to enhance the vitality of the town centre during the evening.
- 7.9 The proposed development seeks to change the use of this vacant unit to an appropriate use within this sustainable edge of centre location, and given that Government guidance requires significant weight to be placed upon supporting economic growth, Officers are of the opinion that the principle of the change of use is considered acceptable in accordance with guidance contained within the Framework and Policies SLE 2 and Bicester 5 of the Cherwell Local Plan 2011-2031.

Impact on Heritage Assets and Visual Impact

- 7.10 Government guidance contained within the Framework attaches great importance to the design of the built environment and 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, in determining planning applications, local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation, the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality, and the desirability of new development making a positive contribution to local character and distinctiveness.
- 7.11 Policy ESD15 of the adopted Cherwell Local Plan 2011-2031 states that 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. Saved Policy C28 of the Cherwell Local Plan 1996 seeks to control new development to ensure that it is sympathetic to the character of its context.
- 7.12 The proposed change of use of the unit would require minor external alterations, to include the installation of a flue, condenser unit and a new aluminium framed shop front. The existing building is uninspiring and it is considered that it does not, at present, make a positive contribution to its historic context. The façade appears tired and would, in Officers opinion, benefit from refurbishment. It is considered that the installation of a new shopfront would enhance the appearance of the building, and the relocation of the entrance door would have a limited impact whilst enabling best use of the interior space for the functioning of the business. The positioning of the pizza preparation bench and customer area adjacent to the glazed frontage would ensure that the frontage is active; enhancing natural surveillance particularly during the evenings.
- 7.13 If illuminated signage is required it will require separate Advertisement Consent. No details of signage have been provided with the current application.
- 7.14 The flue and condenser unit are positioned to the rear of the unit and will not be visible from the public domain. Consequently, it is considered that they will have no impact upon the historic significance of the Conservation Area or the visual amenities of the locality. The installations would also be positioned a sufficient distance from the adjacent listed building to avoid harm to its setting.
- 7.15 The proposed development is considered to accord with Government guidance contained within the Framework, Policy ESD15 of the Cherwell Local Plan 2011-2031 and saved Policy C28 of the Cherwell Local Plan 1996 in terms of visual impact.

Accessibility, Highway Safety and Parking

- 7.16 The site is positioned upon a bend in the road, opposite an area of public parking. The use of the site as a hot food takeaway is considered likely to lead to on-street parking in close proximity to the unit and a number of trips to and from the garage via delivery scooters. In addition, customers parking in the public parking spaces opposite the site will be crossing the road in this location where visibility is limited. Oxfordshire County Council highway authority has described the site as being positioned upon a tortuous section of public highway where the road narrows and footway provision is quite limited, and that the frontage is within a particularly poor section where the awareness of oncoming vehicles is very limited, particularly to the north-west.
- 7.17 Given that the proposed use is likely to generate significant usage with regard to deliveries from the site and individuals visiting the site, the highway authority has recommended that the

application is refused as it would represent an increased hazard in the vicinity of the site, resulting in detriment to the safety and convenience of other road users, contrary to Government guidance contained within the Framework that seeks developments that are located and designed to create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians.

Effect on Neighbouring Amenity

- 7.18 Government guidance contained within the Framework seeks to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Saved Policy C31 of the Cherwell Local Plan 1996 seeks compatible development in residential areas and saved Policy ENV1 of the Cherwell Local Plan 1996 seeks to resist development that would result in materially detrimental levels of noise, vibration, smell, smoke, fumes or other types of environmental pollution. Policy ESD15 of the adopted Cherwell Local Plan 2011-2031 states that development should consider the amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation, and indoor and outdoor space.
- 7.19 The applicant has requested opening hours for the proposed use to be 11am to 11pm Sunday to Thursday, extending to 1pm closure on Friday and Saturday evenings in order to make the most of evening trade. The restaurants opposite the site currently have opening hours until 10.30pm and 11pm and it is considered that the closing time of 11pm Sunday to Thursday is acceptable in this edge of centre location.
- 7.20 However, it is considered that the proposed closing time of 1am is likely to lead to an unacceptable level of disturbance to local residents, with customers visiting the take away and deliveries being made for two hours after the closure of the restaurants opposite. Whilst the site is in close proximity to the town centre, where late night activity is to an extent anticipated, it is considered reasonable to restrict the opening hours to 12am on Friday and Saturday nights in order to safeguard the living amenities currently enjoyed by local residents and avoid significant harm in terms of noise and disturbance. In addition, a condition restricting the running of scooter engines within the garage or to the rear of the unit would avoid noise and disturbance emanating from the rear.
- 7.21 Concerns regarding litter and anti-social behaviour are acknowledged, although the planning system is unable to control the behaviour of individuals once they have left the premises. A condition can be applied in order to ensure that suitable facilities are available for the disposal of litter within the premises themselves.
- 7.22 The Scientific Officer has raised no objection to the proposal on the grounds of noise or odour nuisance, subject to the extract and plant being installed and maintained to the same standard as that set out in the submission.
- 7.23 The flue would continue to enable outlook from the rear facing openings of the flat above the unit, and as no extensions are proposed, it is considered that there would be no harm to amenity in terms of a loss of outlook or overshadowing.
- 7.24 Officers do not consider that there would be a loss of privacy as a result of the development, or – subject to conditions – that it would result in materially detrimental levels of noise, vibration, smell, smoke, fumes or other types of environmental pollution, in accordance with Government guidance contained within the Framework, Policy ESD15 of the Cherwell Local Plan 2011-2031 and saved Policies C31 and ENV1 of the Cherwell Local Plan 1996.

Ecological Implications

- 7.25 Government guidance contained within the Framework states that in determining planning applications Local Planning Authorities should aim to conserve and enhance biodiversity. If significant harm resulting from a development cannot be avoided through locating on an alternative site with less harmful impacts, adequately mitigated, or, as a last result, compensated for, then planning permission should be refused. Policy ESD10 of the adopted Cherwell Local Plan 2011-2031 seeks both the protection and enhancement of biodiversity and the natural environment.
- 7.26 The Ecology Officer has assessed the proposal and considers it unlikely that the development will disturb nesting swifts. She has recommended that the works are undertaken outside of nesting season and that biodiversity enhancements in the form of nest boxes are installed on the building. It is considered that the development accords with Government guidance contained within the Framework and Policy ESD10 of the adopted Cherwell Local Plan 2011-2031.

8. Conclusion

- 8.1 Whilst it is considered that the principle of the proposed change of use from A1 retail to A5 hot food takeaway is acceptable, and that the development would not result in harm to the historic significance of the nearby listed buildings, the designated Conservation Area or the visual amenities of the locality, or cause significant harm to amenity and privacy currently enjoyed by neighbouring properties or biodiversity, this does not outweigh the harm that the development would cause to the safety and convenience of users of the public highway.

9. Recommendation

Refuse, on the following grounds,

The site is located within a tortuous section of public highway where the road narrows and footway provision is limited. The activity generated as a result of deliveries from the site and vehicles and individuals visiting the site would represent an increased hazard in the vicinity of the site resulting in significant detriment to the safety and convenience of other road users, contrary to Government guidance contained within the Framework in terms of sustainable transport.

STATEMENT OF ENGAGEMENT

In accordance with the Town and Country Planning (Development Management Procedure) 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 the Agent was informed of the objection from the Highway Authority.

CONTACT OFFICER: Gemma Magnuson

TELEPHONE NO: 01295 221827