Item: **02**

Reference: **11/00173/COU**

Applicant: **Mr Raymond Fudge**

Location: **Peppercorn Cottage 8 Market Place Market Bosworth**

Proposal: **RETROSPECTIVE CHANGE OF USE FROM A1 DELICATESSEN) TO A3 (CAFE)**

Target Date: **20 May 2011**

Introduction:-

This application is to be considered at Planning Committee as a member of staff has an interest in the site.

Application Proposal

Retrospective planning permission is sought for the change of use from Delicatessen (Use Class A1) to Café (Use Class A3).

The internal floor area of the shop has remained un-changed; however there has been the re-positioning of a counter and display cabinet to create additional space for seating. The application predominantly relates to the ground floor only, with the exception of the toilet facilities that will remain at first floor.

The application seeks the opening hours to be 9 am to 6 pm Monday to Saturday and 10 am to 5 pm Sundays and Bank Holidays. The premises employ two full time and two part time members of staff.

Following concerns raised by officers, additional information has been submitted which states that three tables, each with four chairs have been placed out in front of the premises which have not obstructed the footpath and that an outbuilding to the rear has been used for the storage of tea, some chilled and frozen stock and a separate outbuilding for cleaning tools and domestic cleaning products. Re-consultation was undertaken and expires on 19 May 2011.

The Site and Surrounding Area

The premises are situated in the corner of Market Place which is interspersed with commercial and residential premises. The site is adjoined to the east by No. 10 Market Place a residential premises and to the north west by No.6 Market Place which is a clock shop.

The building is a Grade II Listed Building and is located within Market Bosworth's Local Shopping Centre and falls within Market Bosworth Conservation Area, as defined by the adopted Hinckley and Bosworth Local Plan.

There is free parking to the front of the site on the Market Place.

Technical Documents submitted with application

The application is accompanied by a Design and Access Statement, Schedule of Kitchen Equipment and Heritage Statement.

The Design and Access Statement states that there has been a progressive evolution in the business from a retail delicatessen to one now of being predominantly a tea room and some 80% of trade is now being derived from the purchase of light snacks and drinks consumed on the premises.

The Schedule of Kitchen Equipment has been provided which is made up of domestic appliances; cooker, grill and oven, fridge, three freezers, two coffee machines, a water boiler, four microwaves, two panini machines, a work top blender, two toasters and an air conditioning unit and wall mounted extractor fan.

The Heritage Statement states that the alterations undertaken in extending the seating area by removing the delicatessen counter and display cabinets and no structural building works have been undertaken.

A list has also been provided of the types of food provided and confirmation that no cooking is undertaken that involves deep fat frying, pressure steaming or griddle work.

History:-

06/00894/CON	Partial Demolition of Property	Returned	13.09.06
06/01002/LBC	Demolition of existing stairwell and erection of new stairwell with alterations to dwelling	Approved	01.11.06
06/00893/FUL	Demolition of existing stairwell and erection of new stairwell with alterations to dwelling	Approved	01.11.06
02/00442/COU	Change of use of part of shop to eating area	Approved	17.06.02
01/01151/LBC	Extension and alterations to Premises	Approved	04.01.02
01/01160/FUL	Extension and alterations to premises	Approved	07.01.02
98/00681/LBC	Alterations and extension to provide ground floor shop and first floor flat	Approved	11.11.98
98/00682/COU	Alterations and extension to provide ground floor shop and first floor flat	Approved	11.11.98



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Consultations:-

No comments from:-

Director of Environment and Transport (Highways)
Head of Community Services (Land Drainage).

No objection has been received from Head of Community Services (Pollution).

Market Bosworth Parish Council raises no objections subject to a restriction by condition to the number of tables and umbrellas on the pavement at the front.

Site notice displayed and neighbours notified.

Three letters of objection have been received raising the following concerns:-

a) likely that the premises is being sold
b) potential for smell and fumes from cooking to increase with new owners
c) increase in noise from both kitchen equipment and additional persons on the premises through volume and opening hours
d) change in cooking methods, additional kitchen equipment/extraction in the future and proximity to neighbour
e) proximity to residential premises/ Patio and garden located directly next to kitchen and food sheds/ location is unsuited to a restaurant due to the proximity of residential properties
f) insufficient room for cooking and could lead to dangers/ Potential health and safety issues with increase in cooking
g) the A3 use could lead to extended opening hours/restaurant/licensing conditions

h) encroachment by the tables and chairs onto the pavement and restricting the access to Warwick Close via the gate in the corner of Market Place
i) pedestrian access required to rear/kitchen door opens outwards/food storage in outbuildings has its door permanent propped open, restricting access
j) in-sufficient room as have to use outbuildings
k) potential enforcement issues with previous A1 use
l) seek restrictions on seating and signage
m) bikes being lent on walls and restricting access
n) further commercialisation would alter the characteristics of the square
o) single skin wall, no fire barriers in place.

At the time of writing the report comments have not been received from Ward Members.

The consultation period remains open at the time of writing and closes on 19 May 2011. Any further consultation response received before the closing date will be reported and appraised as a late item.

Policy:-

Central Government Guidance

Planning Policy Statement 1 (PPS1): 'Delivering Sustainable Development' refers to the delivery of sustainable development through the planning system. It advises that planning policies should protect and enhance the environment, promote high quality design and reinforce local distinctiveness.

Planning Policy Statement 4 (PPS4): 'Planning for Sustainable Economic Growth' sets out the Government's objectives for prosperous economies which include improving the economic performance of both rural and urban areas, promoting regeneration and tackling deprivation, delivering more sustainable patterns of development, reducing the need to travel and promoting the vitality and viability of town and other centre uses.

Planning Policy Statement 5 (PPS5): 'Planning for the Historic Environment' indicates that local planning authorities should consider the impact of any proposal on any heritage asset and that there should be a presumption in favour of the conservation of designated heritage assets. Heritage assets include Listed Buildings and Conservation Areas including their setting.

Planning Policy Guidance Note 24 (PPG24): 'Planning and Noise' guides Local Authorities on the use of planning powers to minimise the adverse impact of noise. It outlines the considerations to be taken into account in determining planning applications both for noise-sensitive developments and for those activities which generate noise.

Regional Policy

The decision of the Secretary of State for Communities and Local Government ("SoS") on 6 July 2010 to revoke Regional Strategies using powers in section 79 of The Local Democracy, Economic Development and Construction Act 2009 was successfully challenged in the High Court and was quashed in a judgment handed down on 10 November 2010. Following the decision, the SoS has written to local planning authorities stating that the government will introduce the Localism Bill in November containing proposals to abolish Regional Strategies. The government's

Chief Planning Officer has also written advising that local planning authorities should still have regard to the SoS's letter of 27 May 2010 and that it should still be regarded as a material consideration. Judgement was recently given in a second challenge by Cala Homes when the Court held that the SoS`s intention to reform the planning system by removing regional strategic planning from it is to be taken into account as a material consideration. In relation to the weight to be given to that intention as a material consideration the Court held that `the weight to be given to relevant provisions of Regional Strategies pending the legislative process will be for decision-makers to gauge. Until the end of that process is reached Regional Strategies will remain in place as part of the development plan.

East Midlands Regional Plan

This is the Regional Spatial Strategy for the East Midlands and provides a broad development strategy for the East Midlands. The following relevant policies apply to this proposal:

Policy 1 seeks to secure the delivery of sustainable development.

Local Development Framework Core Strategy 2009

Policy 11: 'Key Rural Centres Stand Alone' states that the focus is to consolidate and improve existing services within the village. More specifically to Market Bosworth it is states that additional employment provision and tourism will be supported and that all new development should respect the character and appearance of the Market Bosworth Conservation Area.

Hinckley and Bosworth Local Plan 2001

Policy Retail 7: 'Local Shopping Centres' is a partly saved Local Plan policy, applicable to retail development outside the Area Action Plan boundary and seeks to grant planning permission for retail development in a number of named local shopping centres.

Policy Retail 8: 'Change from Retail Use within Local Centres' states proposals for a change of use from retail use of premises located in local centres will be considered on their merits and that permission will be granted unless the proposed development would have an adverse effect on the overall retail development of the centre, a seriously detrimental effect on the amenities enjoyed by occupiers of adjoining residential property and the general character of the locality in terms of noise, smell, litter or disturbance, generation of additional traffic which would be detrimental to highway safety or the removal of the shop frontage.

Policy BE1: 'Design and Siting of Development' seeks to safeguard and enhance the existing environment and states that planning permission will be granted where the development: complements or enhances the character of the surrounding area with regard to scale, layout, mass, design, materials and architectural features; ensures adequate highway visibility for road users and adequate off street parking and manoeuvring facilities; is not adversely affected by activities within the vicinity of the site which are likely to cause a nuisance to the occupiers of the proposed development; does not adversely affect the occupiers of neighbouring properties.

Policy BE4: 'Alterations to Listed Buildings' states that planning permission will be granted for alterations and additions to listed buildings only if it can be demonstrated

that the proposal would not detract from the architectural or historical character of the building.

Policy BE7: 'Development in Conservation Areas' states that primary planning policy will be the preservation or enhancement of their special character. Planning permission for proposals which would harm their special character or appearance will not be granted.

Policy T5: 'Highway Design and Vehicle Parking Standards' refers to the application of appropriate standards for highway design and parking provision for new development.

Supplementary Planning Guidance/Documents

The Council's Supplementary Planning Document on Shopping and Shop Fronts (SPD) states that the best location for hot food takeaways, pubs, bars and restaurants and cafes is normally within main and local shopping centres. Where an A3, A4 or A5 use is considered acceptable (outside of these areas), opening hours will be controlled by the imposition of conditions and in the majority of cases, the hours of service to the public will be restricted to 11:30 pm, or earlier where the proposed use is in a primarily residential area, and such a restriction would be in the interests of residential amenity.

Appraisal:-

The main considerations with regard to this application are the principle of development, the impact of the proposed change of use upon residential amenity including odours, noise and general disturbance, highway considerations, impact on the Historic Fabric, Character, Appearance and Setting of the Listed Building and the Market Bosworth Conservation Area, and other matters.

Principle of Development

The site affords retail designation through Policy Retail 7 – Local Shopping Centres and Policy Retail 8 – Change from Retail Use within Local Centres states that change of use from a retail use will be considered on its own merits. The Council's Supplementary Planning Document on Shopping and Shop Fronts (SPD) states that the best location for cafes is normally within main and local shopping centres. As such there is a presumption in favour of A3 uses within local shopping centres, providing that all other planning matters can be adequately addressed.

The principle of the consumption of food and drink on site has already been established through the previous grant of planning permission (ref: 02/00442/COU) for the change of use of part of the shop to eating area. Therefore the main consideration in the determination of this application is whether the proposed changes of use to a solely A3 would have any significant material impacts over and above that currently exerted from the premises as an existing A1 delicatessen with part of the shop used as an eating area.

In response to a neighbouring letter of objection, given the level of sit in-eating already approved on site, combined with the above mentioned policy designation, there is a no in-principle objection to a café use within this setting, providing that all other planning matters can be adequately addressed.

Impact upon Residential Amenity

The neighbouring residential property No. 10 Market Place adjoins the site to the east and access to the rear of this property is gained via a gated entrance in the corner of Market Place which follows round to the rear of the application premises. There are both ground and first floor windows in No's 10's rear elevation serving habitable rooms and the presence of a 1.8 metre close boarded fence with a gate.

Objections have been raised in relation to this application on the basis of potential impacts upon noise and fumes on the adjacent property and potential health and safety issues within the kitchen.

The accompanying application states that an existing air vent was previously approved within a previous application for the extension of the kitchen. The Head of Community Services (Pollution) has confirmed that the café has been operating since February 2009 and no complaints have been received since this time, and has confirmed that they have no objection to the scheme. As such, it is considered that the scheme does not give rise to an unacceptable disturbance to neighbouring properties in terms of noise and fumes.

There is an outbuilding to the rear of the site which has been used for the storage of stock. It is considered that throughout the day this could give rise to a level of comings and goings between the kitchen and the outbuilding. However, it is considered that the given the presence of the 1.8 metre close boarded wooden fence occupying the common boundary, that these trips to the outbuilding would not be visible from the rear amenity space of No.10 Market Place. In addition, the level of noise and disturbance from general comings and goings associated with the use are not considered to be significantly over and above that exerted by the previous use where stock was stored.

Concerns have been raised that there is a potential for the development of the business and that therefore an increases in the method and level of cooking should be considered. This application is retrospective and therefore the application seeks to regularise the use and the methods of cooking and types of foods currently being cooked. The application has, however, been considered on the basis that an approved A3 could allow for a potential change of menu and potential increase in the level of cooking, however this is not considered to be significantly detrimental to the occupiers of the adjacent premises given the restriction in the hours of use (which is to be secured by the imposition of a planning condition). A number of objections have also been raised regarding the site being sold and other owners taking over. It is considered that the fact that the site may be potentially sold in the future is not a planning consideration. For the avoidance of doubt, whilst an A3 use incorporates restaurants and cafes, this application seeks consent for the change of use to a café and for the proposed hours of use, therefore an application would need to be made to the Local Planning Authority to extend this hours of operation, should this be sought in the future. The impact on any changes of use would then be considered at that time.

It is considered necessary to attach a planning condition restricting the hours of use to the day time only, given that the site is located within an area which is interspersed with residential premises, in order to safeguard the amenities of the nearby residents.

In summary, it is considered that the subject to the use operating within the defined hours, it is not considered that there would be a significantly detrimentally increase in the level of noise from cooking and smells and disturbance from general coming and

goings to the rear of the site which would sustain a reason for refusal. With no objection from the Head of Community Services (Pollution) the existing noise and odour mitigation measures are considered acceptable. It is therefore considered that this is in accordance with guidance contained within PPG24 and Saved Policy BE1 of the adopted Hinckley and Bosworth Local Plan.

Highway Considerations

The application form has stated that there are 25 spaces available within the car park which adjoins the site to the north. It is considered that it is unlikely that there would be this number of spaces available at all times and solely for the use of the café, however it is considered that sufficient car parking spaces are located close to the site. The scheme has been considered by the Director of Environment and Transport (Highways) whom has no objection to the scheme.

In response to a neighbouring and parish representations, this application seeks retrospective change of use of the building only and does not include the outside temporary seating. As assessment would need to be undertaken to ascertain whether planning permission is required for the temporary seating should the owner wish to continue with it. A note to applicant advising that the application if approved does not include the outside seating will be added to the decision notice. In addition, the Director of Environment and Transport (Highways) states that 'furniture' onto the public highway will require a licence from the local Highway Authority. For the avoidance of doubt, a private access right is not a material planning consideration.

In summary, it is not considered that there would be any significant impacts upon highways safety. Accordingly, the development accords with Saved Policy T5 of the adopted Hinckley and Bosworth Local Plan.

Impact on the Historic Fabric, Character, Appearance and Setting of the Listed Building and the Market Bosworth Conservation Area.

The premise is a Grade II Listed Building and located within the Market Bosworth Conservation Area. For the avoidance of doubt a Listed Building application is not required as there are no extensions or alterations proposed externally or internally.

There have been concerns raised in respect that the commercialisation of the site would alter the characteristics of the square. It is not considered that the retail character of the area will be significantly changed given that the premises have been operating with an eating area to the shop since 2002 and since 2009 as a café. In addition, in physical terms, it is considered that the change of use relates entirely to the re-positioning of furniture within the interior and that this does not therefore impact upon the architectural or historical structure of the listed building or detract from its setting or impact upon the character and appearance of Market Bosworth Conservation Area.

For the avoidance of doubt, this application seeks the change of use only and the siting of the tables and chairs outside and is therefore not for consideration under this application.

In summary, the proposed change of use of the building would not result in any additional adverse impacts upon the character and appearance of the Listed Building and the Conservation Area over and above that of the existing use and surrounding uses. As such it is considered the scheme would not impact upon the architectural or historical structure of the listed building or detract from its setting and at least

preserves the character of Market Bosworth Conservation Area. It is therefore considered that this is in accordance with guidance within PPS5 and Saved Policies BE4 and BE7 of the adopted Hinckley and Bosworth Local Plan.

Other Matters

In response to a letter of objection raised regarding concerns of the current A1 restrictions, this compliant has been forwarded to the Council's Enforcement Team. It is considered, however that the current operations may have been in breach of a condition but that this application has now been submitted to regularise the use of the A3 use (which is currently in operation). As such any future action is likely to be dependent upon the decision of this application.

The single skin wall and no fire barriers in place and bikes being lent on walls and restricting access are not material planning considerations.

Conclusion

In conclusion, by virtue of the sites positioning within a local shopping area, there is support for A3 uses within the location, subject to all other planning matters being adequately addressed.

The impact on neighbours, by virtue of noise and smell has been considered by the Head of Community Services (Pollution) whom raise no objection. The level of noise and disturbance from general comings and goings associated with the ongoing use are not considered to be significantly over and above that exerted by the previous use.

It is considered that there would not be any significant material impacts upon highway safety or the architectural or historical structure of the listed building or detract from its setting but will preserve the character of Market Bosworth Conservation Area.

Accordingly the proposal is recommended for approval subject to the imposition of relevant planning conditions.

RECOMMENDATION: - Permit subject to no significant material objections being received prior to the expiry of the consultation period on 19 May 2011 and the following conditions:-

Summary of Reasons for Recommendation and Relevant Development Plan Policies:-

Having regard to the pattern of existing development in the area, representations received and relevant provisions of the development plan, as summarised below, it is considered that subject to compliance with the conditions attached to this permission, the proposed development would be in accordance with the development plan as it is considered characteristic of the surrounding area and would not be detrimental to residential amenity, highway safety and would not be detrimental to the architectural or historical structure of the listed building or detract from its setting and the scheme is considered to preserve the character and appearance of Market Bosworth Conservation Area.

Hinckley and Bosworth Local Plan (2001):- Policies Retail 7; BE1; BE4; BE5; BE7; T5; SPD on Shopping and Shop Fronts

Hinckley and Bosworth Borough Council Local Development Framework: Core Strategy (2009): - Policy 11

1 The development hereby permitted shall not be carried out otherwise than in complete accordance with the details: Site Location Plan (Scale 1:500), Plan entitled Current Ground Floor Layout (Scale 1:50) received by the Local Planning Authority 25 March 2011.

2 The premises shall not be open to the public for the use hereby approved outside the hours of 09:00 to 18:00 Monday to Saturday and 10:00 to 17:00 Sundays and Bank Holidays.

Reasons:-

1 For the avoidance of doubt and in the interests of proper planning.

2 To protect the amenities of the adjoining residential property in accordance with Policy BE1 of the adopted Hinckley and Bosworth Local Plan.

Notes to Applicant:-

1 Bats, nesting birds, great crested newts and certain other species are protected by law. If any such species are discovered before or during the works the works must be suspended and the local office of Natural England contacted for advice.

2 This permission does not grant approval under the Building Act 1984 and the Building Regulations 2000 (as amended) for which a separate application may be required. You are advised to contact the Building Control Section.

3 As from 6 April 2008 this Authority are charging for the discharge of conditions in accordance with revised fee regulations which came into force on that date. Application forms to discharge conditions and further information can be found on the planning portal web site www.planningportal.gov.uk.

4 All works within the limits of the Highway with regard to the access shall be carried out to the satisfaction of the Southern Area Manager (0116 3052202).

5 This permission does not grant consent for the positioning of tables and chairs outside of the building, planning permission may be required for such operations. Furthermore, to do so will require a license from the Highway Authority.

Contact Officer:- Ebbony Mattley Ext 5691