



*St Edmundsbury*  
BOROUGH COUNCIL

# DEV/SE/18/036

## Development Control Committee 4 October 2018

### Planning Application DC/18/0635/FUL – 9 St Olaves Precinct, Bury St Edmunds

<b>Date Registered:</b>	18.04.2018	<b>Expiry Date:</b>	23.08.2018
<b>Case Officer:</b>	James Claxton	<b>Recommendation:</b>	Approve
<b>Parish:</b>	Bury St Edmunds Town Council	<b>Ward:</b>	St. Olaves
<b>Proposal:</b>	Planning Application - Change of use from Use Class A1 (Retail) to Use Class A5 (Hot Food Takeaway) and installation of an Extraction System		
<b>Site:</b>	9 St Olaves Precinct, Bury St Edmunds		
<b>Applicant:</b>	London and Cambridge Properties Limited		

#### **Synopsis:**

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and Associated matters.

#### **Recommendation:**

It is recommended that the Committee determine the attached application and associated matters.

#### CONTACT CASE OFFICER:

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## **Background:**

**The application is before the Development Control Committee following consideration by the Delegation Panel. It was referred to the Delegation Panel at the request of Councillor Max Clarke the Ward Member for St Olaves.**

**The Town council have submitted comments confirming that they do not object to the proposal.**

## **Proposal:**

1. The proposal is for the change of use of an existing unit located within the Local Service centre known as St Olaves Precinct from a retail use (A1) to a hot food takeaway use (A5). Included in the proposal is the installation of a ventilation extraction system.

## **Application Supporting Material:**

2. Information submitted with the application as follows:
  - Application Form
  - Plans
  - Planning Statement

## **Site Details:**

3. 9 St Olaves is a commercial unit located within the St Olaves Precinct, which is situated within a residential estate to the north east of Bury St Edmunds. Located to the front of the unit is an area of shared parking. There is a range of uses within the wider precinct.

## **Planning History:**

None relevant

## **Consultations:**

4. Consultations received as follows:

Environment Team	No comments.
Highways Authority	No objections.
Public Health and Housing	No objections, recommend conditions.
Town Council	No objections.

## **Representations:**

5. 27 representations were received, 26 objected and 1 support the proposal. The representations were summarised which is detailed below.

26 objections on how there are already plenty of fast food units on the precinct.

1 letter of support detailed how the proposal would bring a quality food outlet to the precinct.

Full copies of the letters received can be viewed on the Authority's website.

**Policy:**

6. The following policies of the Joint Development Management Policies Document, the St Edmundsbury Core Strategy 2010 & Vision 2031 Documents have been taken into account in the consideration of this application:

**Joint Development Management Policies**

- Policy DM1 Presumption in Favour of Sustainable Development
- Policy DM2 Creating Places Development Principles and Local Distinctiveness
- Policy DM36 Local Centres
- Policy DM46 Parking Standards

**St Edmundsbury Core Strategy**

- Core Strategy Policy CS2 - Design quality and local distinctiveness

**Other Planning Policy:**

National Planning Policy Framework (2018)

The revised National Planning Policy Framework (NPPF)

7. The NPPF was revised in July 2018 and is a material consideration in decision making from the day of its publication. Paragraph 213 is clear however that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the revised NPPF. Due weight should be given to them according to their degree of consistency with the Framework; the closer the policies in the plan to the policies in the Framework, the greater weight that may be given. The key development plan policies in this case are policies DM1, DM2 and DM36 of the Joint Development Management Policies Document (February 2015) and policy CS2 of the St Edmundsbury Core Strategy (December 2010).
8. Policies DM1 and CS2 seek to deliver sustainable development and have a presumption in favour of that. The NPPF sets out in paragraph 10 that at the heart of that frameworks is the presumption in favour of sustainable development, therefore it is considered that policies DM1 and CS2 accord with the NPPF and can be afforded full weight.
9. Policy DM2 provides development principles to create places that respect local distinctiveness recognising and addressing the key features and characteristics of an area. Section 12 of the NPPF details advice on how to achieve well-designed places, with paragraph 127 subsection a) specifically identifying the need to ensure that planning policies secure development that *"...will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development"*. It is therefore considered that policy DM2 accords with the NPPF and can be afforded full weight.
10. Paragraph 80 of the revised NPPF, indicates that policies and decisions should help create conditions in which business can invest, expand and adapt, with significant weight being attached to the need to support economic growth and productivity. Noting the support offered within Policy DM36 to ensure wherever possible the protection of employment land unless otherwise shown to justified, officers are satisfied that there is no material

conflict between Policy DM36 and the provisions of the 2018 NPPF, such that it is considered that full weight can be given to DM36.

**Officer Comment:**

11. The issues to be considered in the determination of the application are:
- Principle of Development
  - Residential Amenity
  - Other Matters

**Principle of Development**

12. The application site is within an existing local commercial area defined as St Olaves Precinct Centre under policy BV12(h), where policy DM36 applies. The proposed use is a main town centre use and the unit is not within a defined primary shopping area or within an area of primary shopping frontages. Policy DM36 seeks to resist changes of use away from A1 unless the use is no longer viable. Assessment of this can be made with reference to the submitted marketing information. As confirmed by the agent for this application details of the proposal were advertised on four national property websites known as Propertylink, Zoopla, Rightmove and Novaloca, alongside adverts placed in local newspapers. This scheme of marketing commenced 01<sup>st</sup> September 2017, with the national advertisements still live at the time of this report. There was some interest expressed for the use of the unit from enquirers however there was not any further follow up from those parties.
13. Assessing policy DM36 as a whole it is reasonable to consider that the scheme of marketing accords with the requirements set out in that policy, providing confirmation that the current use is no longer viable. This alignment therefore with Policy DM36 allows a level of weight to be afforded to the argument for the approval of the change of use.
14. Policy DM36 is also written in two parts. As an alternative to showing that a particular A1 use is no longer viable, it is, also appropriate, in the alternative, to seek to demonstrate that any such change of use, regardless of viability, would not in any event have a detrimental impact upon the vitality and viability of the local centre considered as a whole. In this regard it is considered that the scheme demonstrates clear compliance, with no materially adverse effect upon the vitality and viability of the centre being considered to exist.
15. Whilst the loss of an A1 retail unit is in itself regrettable, the change of use to A5 will give rise to an active commercial use, which will continue to serve the local community. In addition policy DM36 is not prescriptive in terms of adjoining uses in the same way as, policies would operate in the town centre. In terms of the scale and diversity of the uses in the centre there are some 13 units. The centre provides a variety of uses to meet the needs of the community including a number of other A1 uses such as a pharmacy, hairdressers, newsagent, and convenience store to name but a few.
16. This proposal will give rise to the occupation of a vacant unit and it is not considered the introduction of an additional A5 use will have a detrimental impact on the centre's vitality and viability as a whole, given the number of remaining A1 uses within the unit, and noting that, in itself, bringing a vacant unit back into use will have some positive effect upon the vitality and viability of the centre. It is noted that the current proposal may result in the Local Centre having two establishments providing a similar food offer,

however the test is impact on the centre as a whole and the nature of the food being sold is not material. Therefore this proposed change of use would be permissible under Policy DM36 subject to meeting the rest of the policy requirements including no adverse effect on residential amenity or environmental quality (see also policy DM2).

16. An element of weight could also be afforded to considerations around the unit remaining empty. From discussions with the Economic Development team it was noted that where units have been left empty in the past it has encouraged anti-social behaviour which in its self can have a significant negative knock-on-effect on the vitality and viability of local centres. The overall effect of empty units might include the potential erosion of, and resulting in harm to, the character of the locality. Therefore leaving the unit empty would be in conflict with policy DM2 which seeks to *"...maintain or create a sense of place and/or local character"*.
17. Considering that the scheme of marketing accords with the tests as set by policy DM36, alongside the proposal supporting the vitality and viability of the local centre which is a further requirement of that policy, it is considered that the proposal fully accords with the provisions of DM36.

### **Residential Amenity**

17. As detailed in the consultation response received from Public Health and Housing it is recommended that whilst additional information regarding the proposed extract ventilation system, odour control and noise attenuation is required, this can be secured via condition to achieve an installation that is appropriate for the area and would not give rise to significant negative impacts to residential amenity. This approach is considered appropriate, whilst also noting that there are a number of similar extraction units at the St Olaves Precinct serving other premises.
18. It is not considered given the location of the proposal that significant negative impacts to residential amenity would occur. Whilst there would be the potential for a change in the peak times of use for the proposal in comparison to the A1 use, where it is more likely that the use would increase around lunch times and later into the evening, it is not considered that it would give rise to the creation of significant negative impacts on amenity, noting the location of the proposal and that there are other similar uses in the area. The location, as recognised in the Suffolk County Council Highway response detailed below, would also be able to cater for the possible increase in car movements that may arise from the change of use.
19. A second condition has been recommended securing the hours of opening, with the suggestion that they are consistent with and limited to the operating hours of adjacent takeaway units. From discussions with the agent it was suggested that the opening hours for this proposal should be 11:00am to 11:00 pm, Monday to Sunday. Other units at the precinct have not dissimilar hours, opening from 12:00am to 12:00pm, Monday to Sunday. Therefore it is considered that the suggested hours are sufficiently similar to the existing so as not to lead in themselves to any adverse amenity effects, and can be conditioned.

### **Highway safety**

20. As confirmed in the consultation response received from the County Council as Highway Authority, the proposal is not considered to create a severe

impact on the highway network in terms of vehicle volume or highway safety, and is considered to accord with DM46.

## **Other matters**

21. A notable number of objections have been received regarding the proposal and the loss of a retail unit within the precinct. The loss of an A1 unit is regrettable however cessation of that use is not linked to this application and happened prior to it being submitted. Whilst there are merits in retaining the unit for an A1 use there is not a case using material planning considerations that carries enough weight against the proposed change of use.
22. Additionally, as detailed in this report, an element of positive weight can be afforded to the argument of keeping the unit in use, facilitated by this proposal, to avoid negative impacts on the vitality and viability of the precinct arising from antisocial behaviour, which can be attracted by long term vacant property. This is in comparison to a lengthy period of time were the unit remains empty whilst an A1 use, which might never materialise, is sought.

## **Conclusion:**

23. In conclusion, the principle and detail of the development is considered to be acceptable and in compliance with relevant development plan policies and the National Planning Policy Framework.

## **Recommendation:**

24. It is recommended that planning permission be **APPROVED** subject to the following conditions:
1. Time limit
  2. Approved Plans
  3. Opening Hours
  4. Submission of extraction system details

## **Documents:**

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online

[DC/18/0635/FUL](#)

<http://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=P6MA6DPDFGC00>