

SCHEDULE A: Applications with Recommendation

13/0235

Item No: 06

Date of Committee: 19/07/2013

Appn Ref No:
13/0235

Applicant:
Mr Zihni Djelal

Parish:
Carlisle

Date of Receipt:
21/03/2013

Agent:

Ward:
Castle

Location:

5 Botchergate, Carlisle, CA1 1QP

Proposal: Variation Of Condition 3 Of Previously Approved Permission 12/0085 To Extend The Opening Hours from 12pm To 4am Monday To Sunday And Variation Of Condition 5 To Allow The Use Of Preston And Thomas 2 Pan Chips Range

REPORT

Case Officer: Stephen Daniel

1. Recommendation

- 1.1 It is recommended that the conditions are varied in accordance with the details contained in the application

2. Main Issues

- 2.1 Whether The Variation of Condition 3 Would Be Acceptable
2.2 Whether The Variation of Condition 5 Would Be Acceptable

3. Application Details

The Site

- 3.1 The property sits below the County Hotel and lies between a hot food takeaway and a charity shop. The unit has planning permission for use as a hot food takeaway (12/0085), which opened although conditions had not been discharged. The takeaway has now closed down and the unit is currently vacant.
- 3.2 The building is Listed and lies within the Botchergate Conservation Area.

Background

- 3.3 In May 2012, planning permission was granted for the change of use from a charity shop to a takeaway at 5 Botchergate (12/0085). The premises was opened as a fried chicken outlet but the applicant (at the time) did not discharge conditions in relation to odour control and noise insulation measures. The unit has now changed hands and the new owner has now discharged these conditions.
- 3.4 The new owner has also obtained Listed Building Consent to install a new filtration system within the property (13/0344).

The Proposal

- 3.5 This proposal is seeking to vary conditions 3 & 5 of previously approved 12/0085, which granted permission for the change of use of 5 Botchergate to a hot food takeaway. Condition 3 would be varied to allow the premises to open from 12pm, so that it can be open over lunchtime and during the afternoon/ early evening. Condition 5 would be varied to allow the use of a Preston & Thomas 2 pan fish and chip range.

4. Summary of Representations

- 4.1 This application has been advertised by means of site and press notices as well as notification letters sent to two neighbouring properties. Five letters of objection, a petition signed by 35 people and five letters of support have been received.
- 4.2 The letters of objection make the following points:
- Extending the opening hours will lead to excessive noise nuisance and smells which will affect a number of bedrooms at the County Hotel which are located directly above the premises – already have problems from Top Stop next door;
 - Proposal will have a series impact on business at the County Hotel, which already suffers greatly due to the noise from Botchergate pubs and takeaways;
 - Longer opening hours will lead to more mess, rubbish, flies, damage to adjacent premises (Bar Solo) late at night when windows are broken and people urinate in doorways and the side lane;
 - Longer opening hour will increase traffic and parking issues – could lead to more deliveries which will cause problems;
 - The use of chip pan range has major fire safety issues for the County Hotel, which has bedrooms directly above the premises;
 - Smoke from fryers could trigger the fire alarm that is linked into the

hotel and all the businesses beneath it;

- The application has not been put before the Fire Officer;
- Smell from the premises will rise up into the bedrooms, as will noise from staff and customers;
- Will get fumes and smell from the chip shop as the door will be left open – odours will affect County Hotel and premises on Botchergate, in particular the outside seating area at Bar Solo.

4.3 The petition raises concerns about effluent, smell, parking, deliveries, rubbish, late night issues of anti-social behaviour and fire risk.

4.4 The letters of support make the following points:

- Carlisle needs investment;
- The proposal would be good for the economy and would create jobs;
- The premises is currently vacant and we do not want empty shops in Carlisle;
- There is a need for a good food take-away;
- There are no issues with trading hours in this location – the premises is surrounded by four sets of traffic lights and heavy traffic flow;
- Other take-aways in the area open during the day;
- Botchergate doesn't have a late night traditional fish and chip shop;
- The proposal will attract more customers to Botchergate, which is quieter than it used to be.

5. Summary of Consultation Responses

Cumbria County Council - (Econ. Dir. Highways & Transportation): - objects to the variation of condition to allow the premises to open before 6pm. Has concerns over a hot food take-away in this location, which is adjacent to The Crescent/ Botchergate/ English Street/ Court Square traffic signalled junction, where there are also significant pedestrian movements;

Cumbria Constabulary - North Area Community Safety Unit (formerly Crime Prevention): - no objections;

Food Hygiene: - no objections.

6. Officer's Report

Assessment

6.1 The relevant planning policies against which the application is required to be assessed are Policies EC2, LE19 and CP5 of the Carlisle District Local Plan

2001-2016. The proposal raises the following planning issues:

1. Whether The Variation Of Condition 3 Would Be Acceptable

- 6.2 County Highways had no objections to the change of use of the premises to a hot food take-away providing that a condition was added to any consent to ensure that the premises did not open until 6pm on Monday to Saturday and from 4pm on Sunday. A condition was, therefore, added to the original planning permission to restrict the opening hours of the take-away to 18:00 hours to 04:00 hours on Mondays-Saturdays and from 16:00 hours to 04:00 hours on Sunday.
- 6.3 The applicant is seeking to vary the condition to allow the premises to open from 12pm, as he is keen to sell fish and chips over lunchtime and during the afternoon/ early evening. There are a number of other takeaways in this area that open during the day.
- 6.4 County Highways is concerned that customers visiting the fish and chip shop would park outside the premises and this would prevent the free flow of traffic at busy periods (after 6pm the volume of traffic reduces). It has also raised concerns about delivery vehicles parking up in front of the premises. There are double yellow lines outside the premises and people should not, therefore, be parking in this area. If customers of the takeaway park on the double yellow lines to the front of the premises this is a traffic enforcement issue. In relation to deliveries these are permitted from Botchergate at certain times of the day. Notwithstanding this, the applicant has confirmed that there would two deliveries a week and these would park in the loading bay on The Crescent and access the rear of the property via an existing alleyway from The Crescent.
- 6.5 Circular 11/95 (Use of Conditions in Planning Permission) makes it clear that conditions should only be used where they are necessary. Para 22 states that a condition which duplicates the effect of other controls will normally be unnecessary. Given the presence of parking controls to the front the premises, which prevent on-street parking, it would be unreasonable to prevent the premises, which is located in the City Centre, from opening during the day. The variation of Condition 3 to allow the premises to open from 12pm to 4am would, therefore, be acceptable.

2. Whether The Variation Of Condition 5 Would Be Acceptable

- 6.6 Condition 5 on permission 12/0085 stated that any cooking within the premises shall only be undertaken in Henny Penny Model PFE500 (electric) fryers. The premises was restricted to the use of these cookers because they did not produce a constant odour.
- 6.7 The current applicant is proposing to install a new filtration extract system (which has consent), which would comprise the following:
- an electrostatic precipitator (ESP3000E) unit, which would collect the grease and smoke, as well as reducing the risk of fire in the ducting

- a UV-0 1000C air filter, which would remove odours

- carbon filters, which would capture any odours that remain within the system

- 6.8 This proposed system would provide a very high level of odour control (ESP followed by UV, with carbon filters added as an extra to ensure that the system is adequate). ESP would remove 98% of oil, grease and smoke; UV would destroy odours; and carbon would absorb any other odours that may be left in the system. The ESP unit, the air filter and the carbon filters would be mounted on anti-vibration supports bolted to the walls. A maintenance programme has also been submitted, which states that the ESP unit should have its filters cleaned/ de-greased every 8 weeks; the UV lights should be checked and replaced annually if needed; and the carbon filters should be replaced annually.
- 6.9 The Council's Environmental Health Section has been consulted on this application. Officers from Environmental Health have been in discussions with the applicant, the manufacturer of the new filtration system, Preston & Thomas and the Fire Officer about the proposal to use fish and chip fryers in the premises. It considers that the proposed filtration extract system would offer a high level of odour control and that the use of fish and chip fryers in the premises would not, therefore, have an adverse impact on the occupiers of any neighboring properties.
- 6.10 In light of the above, the variation of Condition 5 to allow the use of a Preston & Thomas 2 fish and chip pan range in the premises would be acceptable.

3. Other Matters

- 6.11 A number of objectors have raised concerns about anti-social behaviour and noise caused by customers visiting this premises. There are, however, already a large number of takeaways and bars/ pubs in this area and planning permission already exists to operate a takeaway from this premises until 4am. This issue should not, therefore, be given any weight in the determination of this application.

Conclusion

- 6.12 The variation of Condition 3 to allow the premises to open from 12pm to 4am and the variation of Condition 5 to allow the use of a Preston & Thomas 2 fish and chip pan range in the premises would be acceptable.

7. Planning History

- 7.1 In February 1995, Listed Building Consent was granted for replacement shopfronts (94/0986).

- 7.2 In May 1995, planning permission was granted for replacement shopfronts (95/0330).
- 7.3 In April 1998, planning permission was refused for the change of use of units 1-15 (excluding 9) to A3 use (98/0122).
- 7.4 In April 2012, Listed Building Consent was granted for alteration of existing internal stair into cellar; creation of 2 doors instead of one from existing toilet in cellar; installation of extraction grille to rear elevation (12/0117).
- 7.5 In May 2012, planning permission was granted for the change of use from charity shop to take-away (12/0085).
- 7.6 In October 2012, permission was refused to discharge conditions 6 (noise insulation measures) and 7 (details of filters) of previously approved permission 12/0085 (12/0723).
- 7.7 In April 2013, applications for planning permission and Listed Building Consent for the installation of extractor flue to rear elevation (13/0233 & 13/0234) were withdrawn prior to determination.

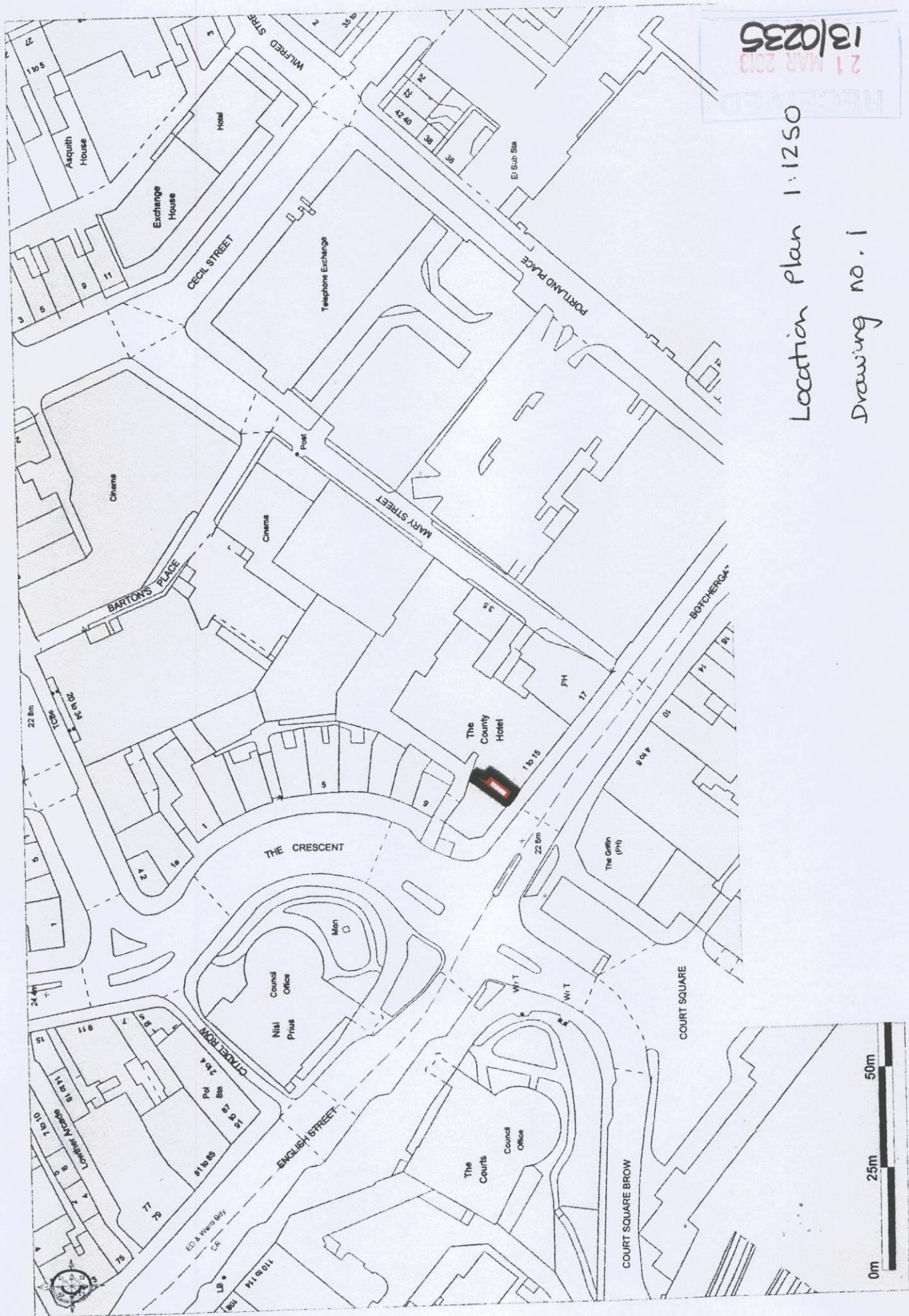
8. Recommendation: Grant Permission

1. The approved documents for this Planning Permission comprise:
1. the submitted planning application form, received 21 March 2013;
 2. Location Plan, received 21 March 2013 (Dwg No. 1);
 3. Location. Block Plan, received 21 March 2013 (Dwg No. 2);
 4. Details of Extract System, received 28 June 2013 (Dwg No. 3);
 5. Fire Risk Assessment, received 28 June 2013;
 6. General Information on Fish Frying Range, received 29 April 2013;
 7. the Notice of Decision; and
 8. any such variation as may subsequently be approved in writing by the Local Planning Authority.

Reason: To define the permission.

2. The development shall be carried out in accordance with the remaining conditions attached to the "Full" application 12/0085.

Reason: For the avoidance of doubt.



Location Plan 1:1250
Drawing no. 1



RECEIVED
21 MAR 2013
13/0235

Location Plan 1:500

Drawing no. 2

CRESCENT

MARY STREET

The County Hotel

1 to 15

22.6m

The Griffin (PH)

0m 10m 20m

Ordnance Survey © Crown C

Promap

Stan Pullan Limited
FIRE SAFETY CONSULTANT

5 Botchergate
Carlisle
Cumbria
CA1 1QP

Dear Sir

**Regulatory Reform (Fire Safety) Order 2005.
Building Regulations 2007. Proposed Alterations**

Further to our recent site meeting I have enclosed for your attention confirmation regarding the general fire precaution as discussed.

The comments are made without prejudice to any further recommendations which may be made when the alterations are completed.

Should you require any further information or clarification on any item please do not hesitate to contact me at the address below.

Yours Faithfully

Stan Pullan
GIFireE



T: 01697 73763 M: 07902883179

The Barn, Gelt Road, Brampton. Cumbria, CA8 1QH.
Registered in England Company No 6415562 Director: Stan Pullan GIFire

Schedule

Means of Escape

- 1.1. To overcome the problem of the exit position of the ductwork at the rear of the premises, which is within 1.8 metre's of the external fire escape from the hotel? A fire damper should be provided in the ductwork where it passes through the external wall.

Any openings within 1.8 metre's horizontally of an external fire escape must be fire resisting thus preventing the passage of smoke or fire which could put persons and the premises at risk.

Fire Fighting Equipment

- 2.1 For the protection of the deep fat frying range one 6 litre wet chemical extinguisher conforming to BS 7937:2000 should be provided and be wall mounted adjacent to the range.
- 2.2 For the protection of the electrical equipment in the basement one 2kg 34B rated carbon dioxide extinguisher conforming to BSEN 3 1996 and wall mounted should be provided and positioned at the foot of the basement stairs.

General

- 3.1 The existing fire risk assessment should be reviewed and amended to take into consideration the alterations and changes to the premises.



External louvre

Extract fan

Transformer

Media Carbon Filter

Transformer

Electrostatic Filter
ESP3000

Duct from
Chip Frier

Fire Damper

Fan &
Filters supported
on anti-vibration mounts

silencer

UV-C & UC-O
Odour control unit
mounted under Carbon
filters

High level duct

existing canopy

Scale 1:50

Front door **PLAN**

PROPRIETARY AND CONFIDENTIAL
THE INFORMATION CONTAINED IN THIS
DRAWING IS THE SOLE PROPERTY OF
<INSERT COMPANY NAME HERE>. ANY
REPRODUCTION IN PART OR AS A WHOLE
WITHOUT THE WRITTEN PERMISSION OF
<INSERT COMPANY NAME HERE> IS
PROHIBITED.

			DIMENSIONS ARE IN INCHES TOLERANCES: FRACTIONAL ± ANGULAR: MACH ± BEND ± TWO PLACE DECIMAL ± THREE PLACE DECIMAL ±
			MATERIAL
			FINISH
NEXT ASSY	USED ON		
APPLICATION			DO NOT SCALE DRAWING

	NAME	DATE
DRAWN		
CHECKED		
ENG APPR.		
MFG APPR.		
Q.A.		
COMMENTS:		

BYERS BROS LTD

5 Botchergate

SIZE	DWG. NO.	REV.
A	extract system 3000E	
SCALE:1:200	WEIGHT:	RECEIVED

28 JUN 2013
13/0235

Drawing No. 3