

PETITION OF OBJECTION, PETITION OF SUPPORT & LOCAL MEMBER OBJECTION

COMMITTEE DATE: 11/10/2017

APPLICATION No. **17/01143/MNR** APPLICATION DATE: 18/05/2017

ED: **LLANISHEN**

APP: TYPE: Variation of conditions

APPLICANT: Mr S Gropetis

LOCATION: 11 STATION ROAD, LLANISHEN, CARDIFF, CF14 5LS

PROPOSAL: VARIATION OF CONDITIONS: 1) TO ALLOW FISH AND CHIP CAFE WITH TAKE AWAY USE AND 2) TO ALLOW TRADING HOURS OF 07:30 TO 21:00 MONDAY - SATURDAY AND 09:00 - 21:00 SUNDAY OF 14/01745/DCO

RECOMMENDATION 1 : That Planning Permission be **GRANTED** for the development in accordance with planning permission 14/01748/DCO without compliance with conditions 1 and 2 but subject to the following conditions:

1. C01 Statutory Time Limit
2. The premises shall be used only be used as a restaurant, hot food takeaway, café or coffee shop and for no other purpose (including any other purpose in Class A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any statutory instrument amending, revoking or re-enacting that Order).
Reason: The use of the premises for other purposes within Class A3 could detract from the amenities of nearby occupiers.
3. The premises shall only be open to members of the public between 09:00 and 21:00 on any day.
Reason: To ensure for the amenities of occupiers of other premises in the vicinity are protected.
4. The extraction of all fumes from the food preparation areas shall be mechanically extracted to a point to be agreed in writing by the Local Planning Authority, and the extraction system shall be provided with a de-odorising filter. All development shall be so mounted and installed so as not to give rise to any noise nuisance. Details of the extraction equipment including the flue shall be submitted to and approved by the Local Planning Authority in writing and equipment installed prior to the commencement of use for the cooking of food.
Reason: To ensure that the amenities of occupiers of other premises in the vicinity are protected.

5. Refuse storage containers shall be provided internally to accommodate general waste, recycling and food waste. Refuse storage shall thereafter be retained.

Reason: To protect the amenities of the area.

RECOMMENDATION 2: The applicant is advised that a suitable grease trap should be provided to prevent entry into the public sewerage system of matter likely to interfere with the free flow of the sewer contents, or which would prejudicially affect the treatment and disposal of such contents.

1. **DESCRIPTION OF PROPOSED DEVELOPMENT**

- 1.1 This application seeks planning permission to modify conditions 1 and 2 of planning application 14/01745/DCO which allowed for the retention of the use of 11 Station Road, Llanishen, Cardiff as a day time café.

Condition 1 states:

The property shall only be used as a daytime café as specified within this application and for no other use within Use Class A3 of the Town and Country Planning (Use Classes) Order 1987 or any order amending, revoking or re-enacting that order.

Reason: Other A3 uses may not be appropriate within this location.

and Condition 2 states:

The daytime cafe shall only be open to members of the public between the hours of 07:30-16:00 Monday to Saturday and shall not open on Sundays or public bank holidays

Reason: To ensure that the privacy and amenities of the occupier of the adjoining properties are protected.

The applicant seeks to vary conditions 1 and 2 of planning permission 14/01745/DCO to read as follows:

Condition 1 – *“The property shall only be used as a fish and chip and traditional British foods café as specified within this application and for no other use within Use Class A3 of the Town and Country Planning (Use Classes) Order 1987, or any order amending, revoking or re-enacting that order.”*

Condition 2 – *“The fish and chip and traditional British foods café shall only be open to members of the public between 07:30 - 21:00 Monday to Saturday and 09:00 -21:00 on Sundays or Bank Holidays.”*

- 1.2 No external changes are proposed as part of this application.

2. **DESCRIPTION OF SITE**

- 2.1 The site relates to the end unit of a block of five, two storey purpose built shop

units within the Station Road Local Shopping Centre. The lawful use of No. 11 is as a daytime café, subject to conditions controlling the type of use permitted. At first floor level is a residential flat.

The four adjoining properties are all in commercial use on the ground floor. The adjoining property contains a residential flat above with the first floor of the three other units being used for commercial and storage purposes. The block of properties is adjoined on the one side by Llanishen Church and associated graveyard and on the other side by Llanishen Police Station. Forecourt parking is available at the front of the properties and a service road is situated to the rear which provided for a garage and a parking space for each unit.

3. **SITE HISTORY**

3.1

Application No : 94/00077/N
Proposal : HOT & COLD FOOD TAKEAWAY FOOD OUTLET
Application Type: FUL
Decision : REFUSED
Decision Date : 12/10/1994

Application No : 91/00282/N
Proposal : HOT AND COLD FOOD TAKEAWAY OUTLET
Application Type: FUL
Decision : REFUSED
Decision Date : 24/07/1991

Application No : 14/01745/DCO
Proposal : RETENTION OF USE OF PROPERTY AS A DAY TIME
CAFE
Application Type: FUL
Decision : PERMISSION
Decision Date : 17/09/2014

Application No : 17/01144/MNR
Proposal : GROUND FLOOR REAR EXTENSION
Application Type: FUL
Decision : PERMISSION
Decision Date : 17/07/2017

4. **POLICY FRAMEWORK**

4.1 The site lies within the Station Road Local Shopping Centre as defined by the proposals map of the Cardiff Local Development Plan 2016

4.2 Relevant National Planning Guidance:

Planning Policy Wales (Edition 9, 2016)

4.3 Relevant Cardiff Local Development Plan Policies:

Policy KP5: Good Quality and Sustainable Design
Policy EN 13: Air Noise Light Pollution and Land Contamination
Policy R5: Local Centres
Policy R8: Food and Drink Uses

4.5 Relevant Supplementary Planning Guidance:

Restaurants, Takeaways and Other Food and Drink Uses (1996)

5. **INTERNAL CONSULTEE RESPONSES**

- 5.1 Waste Management have advised that the current waste storage arrangements are acceptable and need to be retained for future use. They have also confirmed that they do not object to this application.
- 5.3 Traffic and Transportation have advised that they have no objection to the proposal.
- 5.4 Pollution Control have advised that they have no objection to the proposal subject to a condition requiring the submission of the proposed fume extraction system and associated flue.

6. **REPRESENTATIONS**

- 6.1 12 separate letters of objection have been submitted together with a petition of over 50 signatures against the proposal.
- 6.2 A petition of over 50 signatures has also been submitted in support of the proposal.
- 6.3 Local Ward Councillor Shaun Jenkins objects to the planning application for the following reasons:
- a) I have consulted with several nearby businesses who all expressed deep concerns over the potential negative impact to their businesses.
 - b) A fish and chip shop would be out of place in Llanishen and would change the character of the village. Moreover, given the proposed opening hours, I feel this could lead to increased activity in the area at unsociable hours, which again would change the character of the village.
 - c) Litter can be an issue in and around Llanishen village and a takeaway outlet would only exacerbate the problem further.
 - d) There are already significant parking issues in Llanishen village, the proposed development would likely make a difficult parking situation even worse.
 - e) I feel that this development does not meet the requirements of section 3 of the Well-being and Future Generations (Wales) Act 2015. (*N.B. Section 3 relates to a healthier Wales. The goal's objective is to seek a society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood*).

6.4 Local Ward Councillor Phil Bale has commented the following:

I write in relation to the current planning application to vary conditions in relation to 11 Station Road, Llanishen following representations from local residents who have expressed opposition to the proposals. I note that there have been similar applications in the past which have previously been rejected by the Local Planning Authority and the Planning Inspectorate on appeal. It is not clear what has changed significantly since these previous applications were considered as well as the precedent which might be set by a recommendation for approval on this occasion. I would therefore ask that such concerns are fully considered during consideration of this application.

7. **ANALYSIS**

7.1 This application seeks planning permission to modify conditions 1 and 2 of planning permission 14/01745/DCO which allowed the change of use of 11 Station Road to be used as a day time café, subject to conditions. The applicant proposes to vary conditions 1 and 2 of planning permission 14/01745/DCO to read as follows:

Condition 1 – *“The property shall only be used as a fish and chip and traditional British foods café as specified within this application and for no other use within Use Class A3 of the Town and Country Planning (Use Classes) Order 1987, or any order amending, revoking or re-enacting that order.”*

Condition 2 – *“The fish and chip and traditional British foods café shall only be open to members of the public between 07:30 - 21:00 Monday to Saturday and 09:00 -21:00 on Sundays or Bank Holidays.”*

7.2 The key issues for the Council are the impact the modification of the two conditions will have upon the character of the Station Road Local Shopping Centre and the surrounding area and the implications for the residential accommodation situated above the application site and within close proximity to the application site.

7.3 In 1991 a planning application was submitted to change the use of the property to a hot and cold food takeaway food outlet – planning application 91/00282/N refers. This application was refused for the following reason:

The proposal would by virtue of litter, cooking smells, late evening noise and disturbance, together with increased parking and traffic congestion detract from the residential amenities of Llanishen Village and be detrimental to the character of the surrounding residential area as a whole.

7.4 In 1994 a further planning application was submitted to change the use of the property to a hot and cold food takeaway food outlet – planning application 94/00077/N refers. This application was refused for the same reason as the 1991 planning application, namely:

The proposal would by virtue of litter, cooking smells, late evening noise and disturbance, together with increased parking and traffic congestion detract from the residential amenities of Llanishen Village and be detrimental to the character of the surrounding residential area as a whole.

- 7.5 After the second refusal the applicant lodged an appeal to the Planning Inspectorate Division of the then Welsh Government against the Council's decision to refuse to grant planning permission for the use of the property as a hot food takeaway. The matter was considered at a public inquiry whereby the appeal was subsequently dismissed. In summing up the appeal the Planning Inspector stated:

The Llanishen centre is a small compact shopping and commercial centre. There are no residential uses interspersed at ground floor level and only two such uses at first floor level. One is at your clients premises and the other is on the edge of the centre, a centre which is busy with traffic and pedestrians throughout the working day.

Noise and disturbance in such a location, and relating to such a use, is normally a nuisance in the evenings, caused by cars stopping and starting, car doors slamming, car radios and people talking loudly. There was no dispute that the appeal property has ample parking space available in the evening immediately outside. In the circumstances it seems to me that only the occupants of the flat above the shop could be seriously affected by such nuisance. Apart from the public house there are no businesses open after 20:00 in the centre. There was little dispute that the centre is much quieter in the evenings than during the day. It appears to me that whether the flat is occupied by the manager of the business, or by someone else, that the proposal would be detrimental to the occupants in terms of noise nuisance.

Furthermore the appeal premises are immediately adjacent to the parish church and cemetery. A path linking the local comprehensive school to the village centre passes through the cemetery and emerges alongside the takeaway. There is therefore considerable movement at certain times of the day through the cemetery. However, it seems to me that the opening of a takeaway in this location would in all probability lead to the lingering and the consumption of food within the confines of the cemetery to the disturbance of persons visiting graves or occasionally attending a burial.

With respect to litter, it would appear that there is already a significant litter problem in the centre, and in the churchyard and cemetery. This is despite there being a number of well-placed litter bins throughout these areas, and there being a police station within the centre. Whilst other legislation exists to control the nuisance it clearly does not prevent it from happening. There would be no control over the type of takeaway business operated, and there is clearly a potential for substantial litter from an establishment such as a fish and chip shop. In most centres this matter would not in my view be of significant weight to dismiss the appeal. However, I consider in this case that the close proximity of the churchyard and the use of the cemetery as a through route by school children is sufficient to cause justified concern

amongst local people that litter would significantly increase in this sensitive location. It appears to me that the proposal is a good example of inappropriately sited development.

- 7.6 In 1999 it was brought to the attention of the Council that the occupier of the property, who was trading as a bakery, had installed a small frying range to sell chips to the local school children during lunchtimes. Observations had revealed that the sale of hot food to local school children was having a detrimental effect on the area by virtue of noise, litter and general disturbance. An Enforcement Notice was subsequently issued which required the sale of hot food to cease. The Enforcement Notice was not appealed against and the use subsequently ceased. No further involvement was had with the property until 2014 when the ownership of the property was changing and the issue of the Enforcement Notice raised by the purchaser's solicitor.
- 7.7 The purchaser's solicitor had identified that the current use of the property as a daytime café did not have the benefit of planning permission and that there was a valid Enforcement Notice on the property which prevented the sale of hot food from the property. As a result of discussions between both parties legal representatives on 24th July 2014 a planning application was submitted seeking to regularise the use of the property as a daytime café – planning application reference number 14/01745/DCO refers.

As part of the planning application the applicant advised that he had been trading at the property as a daytime cafe for over 11 years since moving into the property in 2003. He also indicated that he traded as a daytime cafe selling mainly sandwiches, baguettes and salad although jacket potatoes, toasties, hot melts and cooked breakfasts were also provided. A search of Departmental records revealed that no complaints had been received with respect to the use of the property from either a Planning or Pollution Control perspective, this issue was only brought to light when the ownership of the property was changing.

The planning officer report advised that:

In terms of land use, the property falls within the Station Road Local Centre as defined by the Local Plan. Paragraph 3 of the SPG on Restaurants, Takeaways and Other Food and Drink Uses states that food and drink uses are complementary, in principle, to the main shopping role of the district and local centres so long as they do not adversely affect the living environments of nearby residents or, with other non-shopping uses, reach such a level that they undermine the shopping character of the area. As this unit has been in a non-shopping use since 2003 it is not considered that the retention of the use would have a detrimental impact upon the predominant shopping role of the centre or the vitality or viability of the shopping frontage.

It is acknowledged that there is a valid Enforcement Notice on the property which prevents the sale of hot food and that the granting of this planning permission will supersede this Notice. However, conditions 1 and 2 restricts the use and trading hours of the property to a daytime cafe only and as such it

is officers opinion that in this instance to have a blanket ban on the sale of hot food at the property is inappropriate.

No objections were received with respect to the planning application and it was considered reasonable therefore that all of the previous issues and concerns in respect of the sale of hot food from the property had not materialised in this instance as no complaints had been received in the 11 years of trading. Planning permission was subsequently granted subject to conditions.

7.8 Looking at the current planning application before the Council the main issue for consideration is the impact the proposal will have upon the character of the Station Road Local Shopping Area and the surrounding residential area. Officers are aware of the previous two refusals with respect to the change of use of the property to a hot food take away and also the Inspectors decision when the appeal was dismissed. Essentially three issues of concern are identified:

1 – Noise nuisance by customers in the evening causing an unacceptable degree of harm to occupiers of the first floor flat;

2 – Impact of the proposed use upon the adjoining church and graveyard by virtue of local comprehensive school children attending the property via the footpath which runs through the church grounds;

3 – Litter associated with such a use.

However, these applications were refused over 23 years ago. The Council now has to consider this application against the current planning policy and the Local Development Plan adopted by the Council in January 2016.

7.9 Looking at the planning history of the property it is apparent that the previous planning applications, which were refused and subsequently dismissed at appeal, related to the change of use of the property from an A1 retail unit to an A3 hot food takeaway. However, since planning permission has already been granted to change the use of the property into an A3 daytime café which has existed for many years (it should be noted raised no objections from either neighbouring occupiers or local ward members) this application differs from the previous applications in that the application site is not operating as an A1 retail unit. As such the circumstances associated with the consideration of this application are not identical to that which was previously refused.

7.10 The application property is sited at the end of a block of five, two storey purpose built shop units within the Station Road Local Shopping Centre. As mentioned at the start of this report the four adjoining properties are all in commercial use on the ground floor. The application site together with the adjoining property at No 13 Station Road also contains a residential flat above with the first floor of the three other units being used for commercial and storage purposes.

- 7.11 Policy R5 of the adopted Local Development Plan relates to Local Centres and seeks to retain residential accommodation at upper floors. It also advises that proposals for uses other than Class A1 (except business offices class B1) being permitted at ground floor level if they would not cause unacceptable harm to the predominant shopping role and character of the centre, the vitality, attractiveness and viability of a specific frontage or group of frontages.

In addition to this Paragraphs 5.276 and 5.277 of the adopted Local Development Plan states :

Planning Policy Wales acknowledges that a range of uses as well as shops are appropriate within centres. These include financial and professional services (A2) and food and drink uses (A3). In general, proposals for such uses will be permitted where they would not cause unacceptable harm to the primary shopping function of the centre or the vitality, attractiveness or viability of its shopping frontages, by virtue of their number or location. What is deemed as unacceptable harm will depend upon the nature of each centre which will have its own individual characteristics.

Local Centres are generally smaller in size and variety of uses. Local Centres are generally more residential in nature than District Centres and do not have the scale or variety of retail and non-retail uses. As a consequence proposals other than A1 may be more difficult to satisfactorily accommodate than in District Centres. Within Local Centres, the policy stance is to discourage significant office or commercial leisure developments and give greater emphasis to safeguarding residential amenity. At ground floor level, only professional and financial (A2) offices with a shop front will be acceptable, provided they do not cause unacceptable harm to the vitality, and viability of the centre. In relation to A3 uses more emphasis will be placed on closing times, and the type of premises.

In this particular instance the use of the property already benefits from A3 use therefore the proposal will not result in the loss of a retail unit. As the first floor of the application site is also shown as being in residential use then the proposal would be in compliance with this policy.

The applicant has also advised that they would accept a later opening time of 09:00 from the approved opening time of 07.30. The proposed closing time of 21:00 is also considered to be acceptable within a Local Centre given that there is residential accommodation above and to the side of the application site. Pollution Control were consulted and have not objected to the proposed opening hours. Such opening times can be controlled by condition.

- 7.12 Policy H2 of the adopted Local Development Plan relates to the conversion of vacant space above commercial premises to residential use and advises that within Local Centres (together with the Central Business District and District Centres) the Council will encourage the conversion of suitable space above commercial premises to residential use. It goes on to advise that the

conversion of empty space above shops to residential use provides a valuable contribution to the city's housing stock and provides much needed homes. Such uses will positively contribute to the creation of vibrant, mixed use communities where people live and shop. Centres remain busy and populated beyond business hours, increasing surveillance and providing a market for ancillary uses associated with the night-time economy.

As previously mentioned as the first floor of the property is presently in use as residential accommodation then it would support the aims and objectives this Policy.

7.13 However, notice should also be taken of Policy EN13 of the adopted Local Development Plan which seeks to ensure that development will not cause or result in unacceptable harm to...local amenity...because of air, noise or light pollution. As such the fact that the first floor of the application site and the first floor of the adjoining property is in residential use then this Policy will need to be taken into consideration. In this respect officers from the Pollution Control Section of the Council were consulted in respect of the change of use and the proposed opening hours. They advised that they had no objection to the proposal and to protect the amenities of the neighbouring occupiers a condition requiring the submission of details of the fume extraction system and associated flue should be imposed.

7.14 Section 3 of the 'Restaurants, Takeaways and other Food and Drink Uses' SPG 1996 advises that District and Local Centres are the most appropriate locations for food and drink uses. It goes on to advise that food and drink uses are also complementary, in principle, to the main shopping role of district and local centres, so long as they do not adversely affect the living environment of nearby residents, or, with other non-shopping uses, reach such a level that they undermine the shopping character of the area. The use of the property as an A3 premises has already been established therefore the proposal will not result in the loss of a retail unit undermining the shopping character of the area. As such the issue of how the use impacts on the residential unit above and adjacent to the application site are the primary issue in this respect.

As mentioned in Para 7.13 Pollution Control have advised that they had no objection to the proposal and to protect the amenities of the neighbouring occupiers a condition requiring the submission of details of the fume extraction system and associated flue should be imposed.

7.15 I note that previously concerns were raised with respect to the impact the use of the property as a hot food takeaway would have upon the adjoining church and associated graveyard. It was claimed that there was the potential for school children who would use the footpath through the church grounds to attend the property to linger and consume food within the confines of the cemetery to the disturbance of persons visiting graves or occasionally attending a burial. Indeed this was one of the reasons cited by the Inspector at the previous appeal

In this respect enquiries have been made with Llanishen High School and it has been confirmed that the school policy has now changed and that years 7 to 11 (previously forms 1-5) are not allowed to leave the school site during the day however years 12 and 13 (former 6th form) are. As such this concern is no longer considered relevant by virtue of the school policy changing and the fact that majority of the school children will no longer be able to attend the Local Centre during the day.

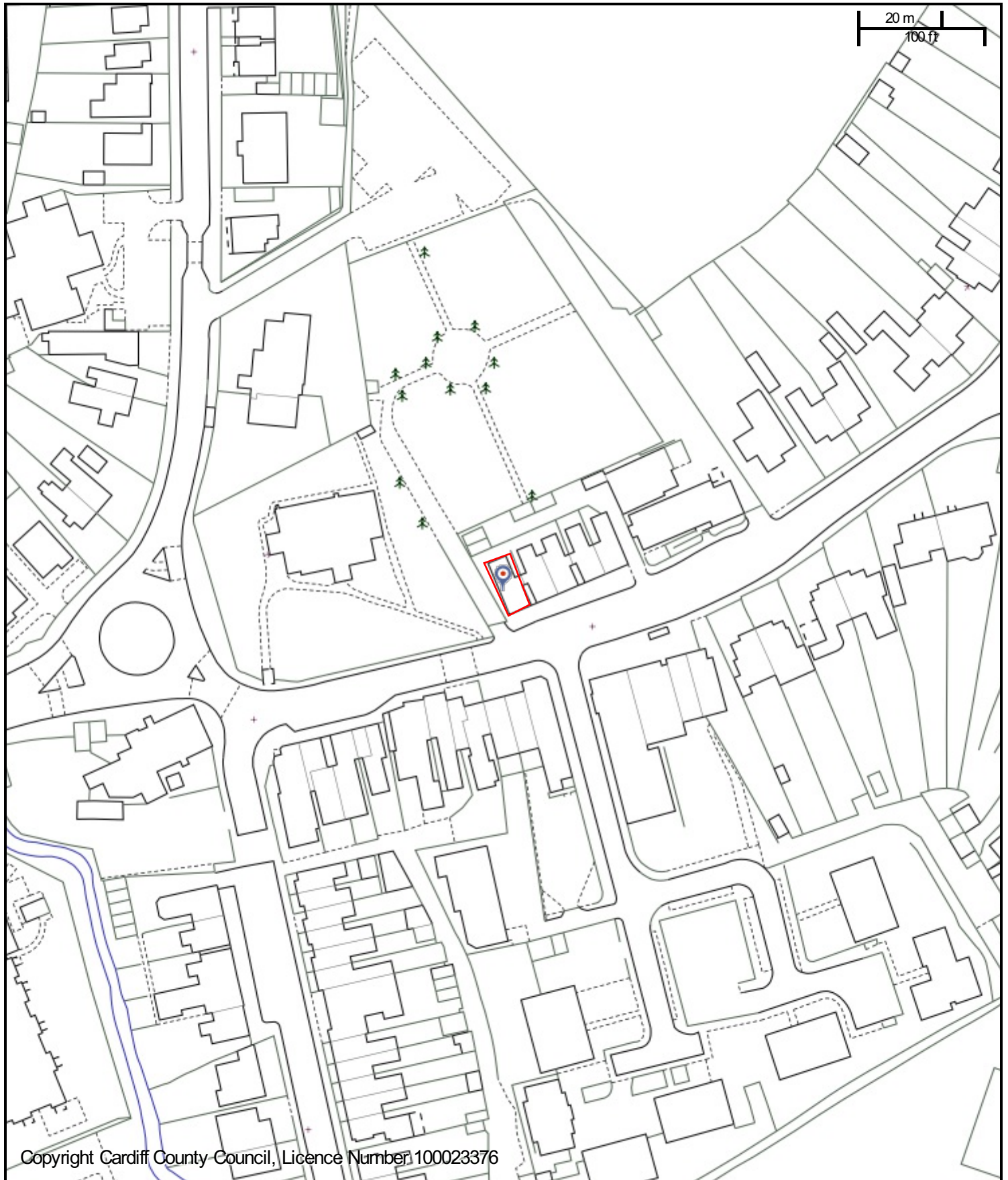
- 7.16 Concerns has also been raised with respect to litter and a fish and chip shop would only lead to an increase in such matter. Waste Management have been consulted and have advised that the current waste storage arrangements are acceptable and need to be retained for future use and that they do not object to the planning application.
- 7.17 In respect of concerns over parking and highway safety issues officers from the Transportation Section of the Council were consulted on the application and have advised that they have no objections to the proposal on highway safety grounds.
- 7.18 In respect of the Concerns raised by Councillor Jenkins I would comment as follows
- a) See 7.11 to 7.13 above;
 - b) See 7.11 to 7.13 above;
 - c) See 7.15 above;
 - d) See 7.16 above;
 - e) The Well-being and Future Generations (Wales) Act 2015 places a duty on public bodies that they must carry out sustainable development and puts in place seven well-being goals to help ensure that public bodies are all working towards the same vision of a sustainable Wales. It defines sustainable development as *“the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals.”* It goes on to identify that *“acting in accordance with the sustainable development principle means that a body must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.”*
Section (Goal) 3 of the Well-being and Future Generations (Wales) Act 2015 relates to a healthier Wales. The goal's objective is to seek *“A society in which people’s physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.”*
It is not considered that the use of the property as a fish and chip café with takeaway sales would be in conflict with this goal given that the property already benefits from planning permission to be used as a daytime café and that the application does not relate to any building operations.
- 7.19 Taking all matters into consideration it is concluded that in this particular instance there are insufficient grounds to refuse to grant planning permission for the development. Circumstances have changed as the property now benefits from an A3 use albeit limited to a daytime café. Since the previous

refusal the Council adopted the Restaurants, Takeaways, and Other Food and Drink Uses SPG in 1996 which has a presumption in favour of food and drink uses which are located within District and Local Centres subject to detailed consideration. The concerns relating to the impact on the church and grounds by schoolchildren would appear to have been overcome by the school changing its policy whereby schoolchildren (other than years 12 and 13) are no longer allowed off the school grounds during the lunchtime period. Officers from the Pollution Control Section of the Council have not raised any concerns with respect to the impact of the proposal on the nearby residential properties and officers from the Highway Section of the Council do not believe the proposal will have any impact in terms of parking or highway safety grounds.

- 7.20 Whilst it is noted that the conditions attached to this report are different to that which the applicant has applied for it is considered that the wording submitted by the applicant would be difficult for the Council to control. During the processing of this application the applicant has also agreed to the opening hours changing to a later start time than that which he originally applied for.

8. **RECOMMENDATION**

- 8.1 Having taken all of the relevant factors into consideration it is concluded that in this particular instance there are insufficient grounds to refuse this application and it is recommended that planning permission be granted subject to conditions.



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