

WARD: Cabot CONTACT OFFICER: Tessa Connolly

SITE ADDRESS: 5 Maggs House 78 Queens Road Clifton Bristol BS8 1QU

APPLICATION NO: 14/05069/F Full Planning

EXPIRY DATE: 9 December 2014

Change of use of ground floor unit from A1 (retail) to A3 (restaurant).

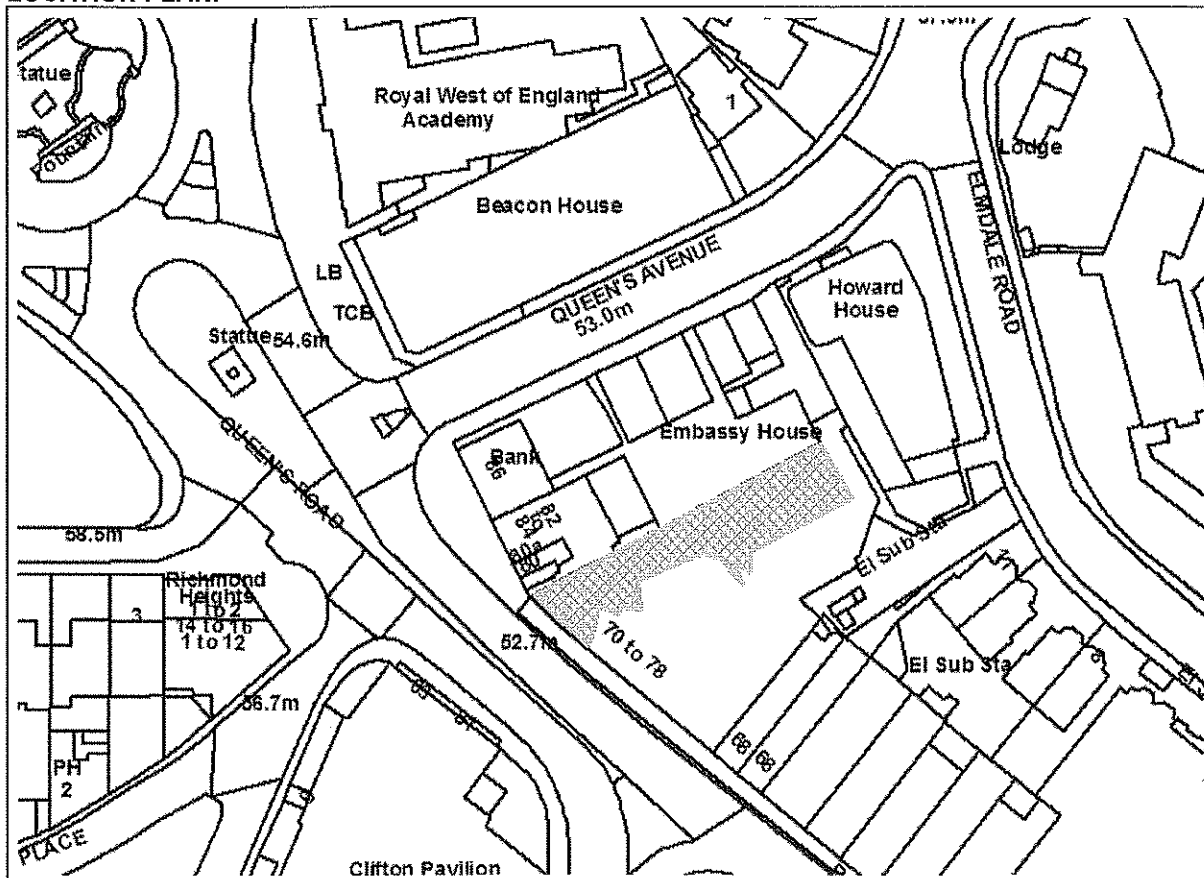
RECOMMENDATION: Grant subject to Condition(s)

AGENT: Firstplan Ltd
Golden Cross House
8 Duncannon Street
London
WC2N 4JF

APPLICANT: Wahaca
C/o Firstplan Ltd

The following plan is for illustrative purposes only, and cannot be guaranteed to be up to date.

LOCATION PLAN:



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SUMMARY

This planning application that is before members for decision today proposes the change of use of a ground floor retail unit (A1) to a restaurant (A3), the recommendation set out in this report is to grant conditional planning permission.

The key issues with the application are; the principle of the change of use and an assessment of the potential impacts from the use on residential and environmental amenity.

16 contributors have objected to the proposals including Clifton & Hotwells Improvement Society, the Richmond Hill Area Residents' Association and Ward Members, Councillors Woodman and Wright.

Officers are satisfied that the proposal would be acceptable in principle in terms of land use designation and that subject to compliance with planning conditions no significant adverse amenity impacts would result and for these reasons officers can support the proposition.

SITE DESCRIPTION

The application relates to a commercial unit on Queens Road situated on the north side of The Triangle. It forms the ground floor of Maggs House, a four storey building. The unit is currently occupied by Butlers, a home accessories, furniture and gift shop. The site is within a designated primary shopping frontage.

The application relates to the change of use of the ground floor of the property only. There are residential properties situated on the floors above the unit and a nightclub located below in the basement. The servicing area and waste storage area for Maggs House is accessed from Elmdale Road.

The application site within the Park Street and Brandon Hill Conservation Area.

RELEVANT HISTORY

Whilst there is a wide range of planning applications in respect of this site none are of direct relevance to the determination of this application.

APPLICATION

The application is for the change of use of the unit from A1 (retail) to A3 (restaurant) use.

The application documentation states that approximately 165 covers are proposed.

Refuse storage is proposed to the rear in the service yard for Maggs House which is accessed from Elmdale Road.

No physical alterations to the front of the premises are proposed, any intended works and indeed advert and signage proposals would need to form part of further applications.

RESPONSE TO PUBLICITY AND CONSULTATION

Site notices were posted, the application was advertised in the local press and 74 neighbouring and

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nearby properties were consulted.

12 written representations have been received objecting to the proposals on the following grounds:

- Too many restaurants in this location: loss of retail and erosion of mixed use local amenities
- Already noise, mess and property damage from other food and drink establishments
- Noise and hours of opening/ times differ to Licensing application

Objections have also been received from the following parties: Clifton & Hotwells Improvement Society (CHIS), the Richmond Hill Area Residents' Association (RHARA) and the two Ward Councillors.

OTHER COMMENTS

The Pollution Control Team raises no objections to the proposal. They have recommended further details by condition prior to development in respect of extraction and ventilation systems and sound insulation measures and provided guidance on acceptable opening times.

RELEVANT POLICIES**National Planning Policy Framework – March 2012****Bristol Core Strategy (Adopted June 2011)**

| | |
|-------|---|
| BCS2 | Bristol City Centre |
| BCS7 | Centres and Retailing |
| BCS10 | Transport and Access Improvements |
| BCS22 | Conservation and the Historic Environment |
| BCS23 | Pollution |

Bristol Site Allocations and Development Management Policies (Adopted July 2014)

| | |
|------|---|
| DM1 | Presumption in favour of sustainable development |
| DM8 | Shopping areas and frontages |
| DM10 | Food and drink uses and the evening economy |
| DM14 | The health impacts of development |
| DM23 | Transport development management |
| DM32 | Recycling and refuse provision in new development |
| DM33 | Pollution control, air quality and water quality |
| DM35 | Noise mitigation |

Bristol Central Area Plan (emerging)

| | |
|--------|--|
| BCAP13 | Strategy for retail development in Bristol City Centre |
| BCAP16 | Primary shopping frontages in Bristol City Centre |
| BCAP19 | Leisure use frontages in Bristol City Centre |
| BCAP29 | Car and cycle parking in Bristol City Centre |
| BCAP30 | Pedestrian routes |
| BCAP31 | Active ground floor uses and active frontages in Bristol City Centre |
| BCAP42 | The approach to West End |

Supplementary Planning Guidance

| | |
|--------|--|
| PAN 2 | Conservation Area Enhancement Statements (November 1993) |
| PAN 17 | Diversity in Shopping Centres (early 1999) |

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KEY ISSUES

(A) IS THE PROPOSED CHANGE IN LAND USE ACCEPTABLE IN PRINCIPLE?

The site is situated within a primary shopping frontage within the Queen's Road and Park Street retail area of the city centre. The main issue is whether the proposed restaurant would have an impact on the retail function of the Queens Road and Park Street shopping centre.

Policy BCS7 of the Bristol Core Strategy states that "Uses which contribute to maintaining the vitality, viability and diversity of centres will be encouraged. Active ground floor uses will be maintained and enhanced throughout the centres. Retail shop uses will predominate in the designated primary shopping areas of the City and Town Centres, supported by a wider range of appropriate uses in the other parts of these centres."

This section of shopping frontage is healthy with no vacancies. The Queens Road Triangle and Park Street area has seen a change in the last few years with an increase in the number of food and drink uses. There is concern from the representations received that the area is changing from a retail area to a more night time food and drink led area and economy.

The same issues were analysed in a recent appeal decision in March 2014 concerning the change of use of no 62 Queens Road from retail to a restaurant. In his decision to allow the appeal and grant planning permission for the change of use, the Inspector stated that despite the number of A3 uses, the shopping frontage remains strong especially with the presence of and Sainsbury and Wilkinsons on Royal Parade. For the same reasons, it is considered that the loss of another retail unit in the area to an A3 restaurant use would not have a detrimental impact on the vitality and viability of this locality as a primary shopping area. That appeal was in respect of a decision on a planning application that had been recommended by planning officers for approval but which was refused by the Development Control Committee.

Officers consider that the proposal would constitute an active ground floor use as restaurants in this location generate a high level of footfall as they are open throughout the day and into the evening.

The application seeks an opening time of 10.00 daily and closing times of 23:30 Monday to Saturday and 22:30 on Sundays. The proposed opening times are not considered unreasonable and are consistent with other similar premises. As such there is no objection.

The Council's Licensing Sub-committee granted a Premises License for the unit on 22 January 2015. During the period of consideration of that application the applicant amended their operating schedule and hours of opening to align with those proposed as part of this planning application. In considering the premises license application the committee was advised that the Avon and Somerset Police and the Council's own licensing and pollution control officers did not object.

Policy DM8 of Bristol Site Allocations and Development Management Policies; states that the change of use of ground floor shop premises, situated on primary retail frontages as defined to non-shopping uses will be permitted, provided that the proposed use would not seriously undermine the retail function of the shopping centre.

Within the primary shopping frontage extending from Queen's Road to the bottom of Park Street, the unit is not a key building within the Queens Road (The Triangle) primary frontage. The frontage width of the unit is 6m but the unit is very deep so the floor space of the unit is just over 500 square metres.

A retail impact assessment has been undertaken by the applicant to show the ratio between A1 and non-A1 uses in the area. When assessing the frontage from no. 40 - 86 Queens Road (even) to include the application site as A3 use the findings were as follows:

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| Use Class | A1 | A2 | A3 | Mixed A1/A3 | Total |
|-------------|------|------|------|-------------|-------|
| No of units | 12 | 5 | 3 | 1 | 21 |
| Percentage | 57.1 | 23.8 | 14.3 | 4.8 | 100 |

Costa and Subway are classified as A1 use for the purposes of this assessment.

The results show that A1 is the dominant use within this section of the frontage and on this basis, the proposal is in accordance with policies BCS7 & DM8.

(B) WOULD THE PROPOSAL HAVE A DETRIMENTAL IMPACT ON ADJOINING RESIDENTS OR THE WIDER SURROUNDING AREA IN TERMS OF NOISE, DISTURBANCE AND ODOURS AND ARE HIGHWAY IMPLICATIONS ACCEPTABLE?

Policy DM10 of the Bristol Site Allocations and Development Management Policies deals with Food and Drink Uses and the Evening Economy. It recognises that in recent years there has been a significant growth in food and drink uses within Bristol's centres and observes that whilst such uses are frequently beneficial to the vibrancy, vitality and diversity of centres, including their tourism, evening leisure and entertainment roles, they require careful management in order to prevent harmful impacts to the centre and its wider area. The policy aims to ensure that the individual or cumulative impacts of food and drink uses do not harm the character and user's experience of a centre, cause nuisance to residents living in the vicinity of food and drink uses or have specific impacts on health considerations.

It sets out that planning applications should indicate how certain criteria in the policy have been addressed. Specifically it states that; development of food and drink uses will be acceptable provided that they would not harm the character of the area, residential amenity and/or public safety, either individually or cumulatively. Proposals which would result in a harmful concentration of food and drink uses will not be permitted. In order to assess the impact of food and drink proposals on an area the policy requires the following matters to be taken into account:

- The number, distribution and proximity of other food and drink uses, including those with unimplemented planning permission;
- The impacts of noise and general disturbance, fumes, smells, litter and late night activity, including those impacts arising from the use of external areas;
- The availability of public transport, parking and servicing;
- Highway safety;
- The availability of refuse storage and disposal facilities;
- The appearance of any associated extensions, flues and installations.

The pollution control team does not object to the proposal, the proposed opening times are not considered unreasonable and are consistent with other similar premises. As such there is no objection.

The opening times, servicing and delivery times, details of the kitchen extract unit can all be controlled using planning conditions. All deliveries and refuse storage/collection is proposed to the rear in the service yard for Maggs House which is accessed from Elmdale Road. This area is already used for adjoining units.

It is noted that the recent Premises License granted on 22 January had a condition controlling the hours of the collection of refuse and recyclables and the tipping of empty bottles into external receptacles and deliveries to between 10.00 and 23.00, due to the residential occupiers above the planning conditions for this are proposed to end at 20.00.

There are no envisaged adverse highway implications.

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Overall, it is not considered that that the proposal conflicts with the provisions of policy DM10.

CONCLUSION

Officers have considered the key assessments in terms of the principle of change of use and assessed the potential impacts from the development. Whilst noting that there has been a relatively high number of objections including from amenity societies and Ward Councilors the Committee needs to carefully consider the proposal against the relevant policies of the Development Plan.

This report has established that after a change of use of the application property has occurred A1 (retail) would continue to be the dominant use within this section of the frontage. As such the change of use would not undermine the vitality and viability of the area and an appropriate balance of uses would be provided and policies BCS7 & DM8 are satisfied.

The report has also established that there would be no adverse impacts on amenity or highway conditions and officers can accordingly advise members that the proposal satisfies policy DM10.

In light of having reached these two key conclusions members are being asked to grant planning permission and attach the recommended conditions which will ensure that the operation of the premises does not have adverse planning impacts.

COMMUNITY INFRASTRUCTURE LEVY

How much Community Infrastructure Levy (CIL) will the development be required to pay?

Development of less than 100 square metres of new build that does not result in the creation of a new dwelling; development of buildings that people do not normally go into, and conversions of buildings in lawful use, are exempt from CIL. This application falls into one of these categories and therefore no CIL is payable.

RECOMMENDED GRANT subject to condition(s)**Time limit for commencement of development**

1. Full Planning Permission

The development hereby permitted shall begin before the expiration of three years from the date of this permission.

Reason: As required by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Pre commencement condition(s)

2. Sound insulation - submission of scheme and retention thereafter

No development shall take place until a detailed scheme of noise insulation measures for between the proposed restaurant and the nightclub below has been submitted to and approved in writing by the Local Planning Authority. The scheme of noise insulation measures shall be prepared by a suitably qualified consultant/engineer and shall take into account the provisions of BS 82333:1999 "Sound Insulation and Noise Insulations for Buildings Code of

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Practice". The approved scheme shall be implemented prior to the commencement of the use and be permanently retained thereafter.

Reason: In order to safeguard the amenities of occupiers of the building.

3. Details of extract/ventilation system - not shown

No development shall take place until details of the means of ventilation for the extraction and dispersal of cooking smells/fumes, including details of its method of construction, odour control measures, noise levels, its appearance and finish have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be installed before the use hereby permitted commences and thereafter shall be permanently retained.

Reason: These details need careful consideration and formal approval and to safeguard the amenity of adjoining properties and to protect the general environment.

4. Odour Management Plan

No development shall take place until there has been submitted to and approved in writing, by the Local Planning Authority, an Odour Management Plan, setting out cleaning, maintenance and filter replacement policies. The plan should include a written recording system to record and demonstrate when all such work is carried out. The approved odour management plan shall be complied with throughout the duration of the use.

Reason: To safeguard the amenity of nearby premises and the area generally.

5. Noise from plant and equipment

No development shall take place until an assessment to show that the rating level of any plant & equipment, as part of this development, will be at least 5 dB below the background level has been submitted to and approved in writing by the Local Planning Authority. The assessment must be carried out by a suitably qualified acoustic consultant/engineer and be in accordance with BS4142: 1997- "Method of rating industrial noise affecting mixed residential and industrial areas".

Reason: In order to safeguard the amenities of adjoining residential occupier.

Post occupation management

6. Use of Refuse and recycling facilities

Activities relating to the collection of refuse and recyclables and the tipping of empty bottles into external receptacles shall only take place between 08.00 and 20.00 Monday to Saturday and not at all on Sundays or Bank Holidays.

Reason: To safeguard the amenities of nearby occupiers

7. Activities relating to deliveries shall only take place between 08.00 and 20.00 Monday to Saturday and not at all on Sundays or Bank Holidays

Reason: To safeguard the amenities of nearby occupiers

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List of approved plans

8. List of approved plans and drawings

The development shall conform in all aspects with the plans and details shown in the application as listed below, unless variations are agreed by the Local Planning Authority in order to discharge other conditions attached to this decision.

Site location plan, received 14 October 2014

(BC)01 Proposed ground floor plan, received 14 October 2014

(01)02 Proposed roof plan, received 14 October 2014

(03)02 Proposed rear elevation, received 14 October 2014

Reason: For the avoidance of doubt.

Advices

1. Noise - plant & equipment

Anti-vibration mounts should be used to isolate plant from fixed structures and a flexible connector used to connect the flue to the fan if there is a potential to transmit vibration to any noise sensitive property. Any systems will also need regular maintenance so as to reduce mechanical noise.

2. Details of extraction/ventilation system

It is recommended that any flues for the dispersal of cooking smells shall either:

(a) Terminate at least 1 metre above the ridge height of any building in the vicinity, with no obstruction of upward movement of air or:

(b) Have a method of odour control such as activated carbon filters, electrostatic precipitation or inline oxidation.

Guidance on the above can be gained at 'Guidance on the Control of Odour & Noise from Commercial Kitchen Exhaust Systems' available from www.defra.gov.uk by searching for Product Code PB10527.

3. Flues, ducts and extract systems: The technical details of the flues, ducting, extract system, filters etc. and their continuing operation should be the subject of detailed discussion and agreement with council officers. These areas of operation come within the controls of the Environmental Protection Act 1990, and it is important to establish and implement the requirements of this legislation.

4. Odour Management Plan

Guidance on the above can be gained at 'Guidance on the Control of Odour & Noise from Commercial Kitchen Exhaust System', Published electronically by Department for Environment, Food and Rural Affairs. Product Code PB10527. <http://www.defra.gov.uk/environment/noise/research/kitchenexhaust/pdf/kitchenreport.pdf> And 'Odour Guidance for Local Authorities' Published electronically by Department for Environment, Food and Rural Affairs. <http://www.defra.gov.uk/environment/quality/local/nuisance/odour/documents/local-auth-guidance.pdf>

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BACKGROUND PAPERS

Pollution Control

19 December 2014

14 January 2015

