

**DC/2017/00453**

**CHANGE OF USE FROM A1/A3 MIXED USE TO FULL A3 USE AS A TAKEAWAY OPERATING 7 DAYS A WEEK UNTIL 11PM.**

**1 THE BARTON, AGINCOURT SQUARE, MONMOUTH, NP25 3BT**

**RECOMMENDATION: Approve**

Case Officer: Jo Draper

Date Registered: 13.05.2017

**1.0 APPLICATION DETAILS**

- 1.1 The Barton is a narrow lane/footway which runs from Glendower car park behind Church Street to the network of lanes near the Beaufort Arms/Shire Hall in Monmouth town centre, and includes the dog leg running back to the junction of Church Street and Agincourt Square. The premises subject of this application is currently vacant but was previously used by a teashop come garden centre that was allowed to be open until 19.00h, Monday to Saturday and 18.00h on Sundays and Bank Holidays to cater for evening trade, the premises also had a licence.
- 1.2 The site comprises a building of no particular character and fenced compound behind existing buildings in Agincourt Square; the site is visible from the car park and from that part of The Barton which runs from the junction of Church Street with Agincourt Square. There is an extant planning permission for the redevelopment of this site to demolish the existing building and redevelop the site with a mixed use of offices and residential units.
- 1.3 The site is roughly square in shape, with a frontage to The Barton of 18.7m. To the north it faces the rear of properties on Church Street/Agincourt Square and the lane between those two rows of buildings. To the east it faces the car park, to the west it faces a strip of open land beyond which is a side elevation of the Beaufort Arms (with the residential block known as Beaufort Court alongside), while to the south it adjoins the curtilage of the block of flats known as Beaufort Mews. The single storey building which occupies part of the site has some stone in its elevations but is mainly of brick; the adjoining area is open, the site as a whole being clearly visible through the chain link fencing to The Barton and the car park. Close boarded fencing and block walling form the remaining two boundaries.
- 1.4 This application proposes to use the site as an Indian takeaway with operational hours until 23:00h proposed. There are no external changes proposed to the building with the exception of an extraction system proposed to the east side of the building towards the car park. A dedicated single pedestrian access is proposed from the Barton, and all openings leading onto the open yard that faces south towards Beaufort Court are to be used for ventilation and staff access only. The enclosed yard situated to the south (that has a tree within it near to the edge) is to be used for staff car parking.
- 1.5 The site lies within Monmouth Conservation Area and Central Shopping Area.
- 1.6 The applicant has provided the following information in support of the application :
  - (i) As nearby residential properties are within 25 metres, the extraction system that is proposed shall not exceed the existing background noise level at any time by more

than 5dB(A) at any residential property to ensure that the amenities of occupiers of other premises in the vicinity are protected.

- (ii) The propose flue will be fitted with a three stage carbon filter. The flue will exit the building at a high point (north – east elevation of proposed plans) and will be resiliently fitted to the structure so it only sits on the roof (south – east elevation of proposed plans) mounted on vibration rubber to prevent transmission of vibration.
- (iii) Fume Extraction from the food preparation areas shall be mechanically extracted and the extraction system shall be provided with de-greasing and de-odorising filters. Further to the above, any ducting shall be resiliently mounted to prevent the transmission of vibration through the structure of the building. The ducting will terminate at a high level which will allow any odours to disperse.
- (iv) In accordance with pre-planning application advice – we will not allow the use of our car park to the public or customers to minimise noise because of the close proximity to residential dwellings. This area will only be used as a staff car park area. Customers have ample parking in the car parks behind the site.

## **2.0 RELEVANT PLANNING HISTORY**

DC/2016/01113 Variation of condition no. 1 of Conservation Area Consent  
DC/2010/00468 Current

DC/2016/01112 Variation of condition no. 1 of planning permission DC/2010/00467.  
Current

DC/2015/00238 Change of Use from A1 to A3/A1 mixed Use. Approved 22/04/2015

DC/2010/00468 Conservation Area Consent Demolition of existing single storey building and the new building of a mixed use development of two offices and four units  
Approved 29/07/2010

DC/2010/00467 Demolition of existing single storey building and replacement by a new mixed use development of two offices and four residential units  
Approved 17.11.2011

## **3.0 LOCAL DEVELOPMENT PLAN POLICIES**

### Strategic Policies

S6 Retail Hierarchy  
S17 Place Making and Design

### Development Management Policies

DES1 General Design Considerations  
EP1 Amenity and Environmental Protection:  
Development proposals that would cause or result in an unacceptable risk /harm to local amenity, health, the character /quality of the countryside or interests of nature conservation, landscape or built heritage importance due to the following will not be permitted, unless it can be demonstrated that measures can be taken to overcome any significant risk:

- Air pollution;
- Light pollution;
- Noise pollution;
- Water pollution;
- Contamination;
- Land instability;
- Or any identified risk to public health or safety

RE2 Central Shopping Areas :

Within CSAs (except for Primary Shopping Frontages), subject to detailed planning considerations:

- a) proposals which will safeguard the vitality, attractiveness and viability of the defined CSAs will be permitted;
- b) a change of use from Classes A1, A2 or A3 on the ground floor with street frontage to uses other than Classes A1, A2 or A3 will not be permitted, unless it can be demonstrated that criterion (a) can be met by attracting footfall;
- c) change of use to residential of ground floor premises will not be permitted unless evidence is provided to demonstrate that the premises is not viable for retail or commercial use, including that the premises has been vacant for at least one year and that genuine attempts at marketing the existing use have been unsuccessful.

## 4.0 REPRESENTATIONS

### 4.1 Consultations Replies

Monmouth Town Council: No comment to date, to be reported as late correspondence

Environmental Health: Of particular significance to my position the applicant has indicated how he would address concerns of noise and odour from this proposal but has provided no real support as to how this will be achieved.

There are also a number of objections to the proposal on the grounds of noise and odour from residents of nearby properties.

Whilst I am of the opinion that I am not in a position to substantiate an objection to proposal I would looking to ensure appropriate conditions, as outlined below, are attached to any application granted:

- Before the use of the development commences a noise mitigation scheme shall be submitted in writing and approved in writing by the local planning authority. The mitigation scheme should detail measures that will be implemented to ensure that any noise associated with the development does not cause detriment to the amenity or a nuisance to those living and working in the area.
- Before the use of the development commences a scheme containing full details of arrangements of internal air extraction , odour control and discharge to atmosphere from cooking operations including any external ducting and flues shall be submitted in writing and approved in writing by the local planning authority. The equipment shall thereafter be maintained in accordance with the manufacturer's instructions and operated at all times when cooking is carried out unless otherwise agreed beforehand in writing with the local planning authority.

Highways: No objection

The site is located to the rear of Agincourt Square. It can be accessed by pedestrians from the Town Centre via Agincourt Square has existing vehicular access via the Glendower Street public car park.

The supporting plans show there is space within the site to the rear of the building to provide vehicular parking for staff. It is expected that any customers arriving to the site by vehicle will use the adjacent public car park.

In light of the aforementioned comments there are no highway grounds to sustain an objection the application.

There are no specific conditions we wish to request from a highways standpoint with regards to any grant of planning approval.

#### 4.2 Neighbour Notification

7 representations of objection have been received raising the following issues:

- Previous use as a tea shop and garden centre had better times of opening and did not have an impact upon neighbouring properties
- Encourage people to congregate particularly after closure of local business and public houses at 11am
- Beaufort Arms Grade 11 building so not allowed double glazing therefore the impact of noise and smells is worse
- Closure time of 23:00 7 days a week offers no respite for neighbours
- Littering
- Noise disturbance
- Odours
- Poor occupation of pedestrian entrance, narrow street poorly lit cause further nuisance alternative access should be considered
- Mature tree in grounds could be affected
- Materials inappropriate
- Disabled transport service uses the car park area adjacent to the site

14 representations of support received raising the following points:

- Existing site is an eye sore and it needs tidying up
- 3 Indian restaurants in Monmouth but no takeaway
- Ideal for small independent business with ample car parking close to the site
- Nearby businesses and public houses close at the same time as the public house so this will not serve the outfall from these uses at closing time
- No change in external appearance
- Location serves the proposed use well
- Tenant has built up an excellent reputation as a responsible entrepreneur with an established business Indian Summer in Monmouth

#### 4.3 Other Representations

Monmouth District Council for Chamber of Commerce:

- Applicant run a successful business in Monmouth for period of 12 years
- Site sits on a cut through from Church Street and Glendower Street and does not lend itself to A1 uses
- This is not in the primary shopping frontage where retaining percentage of A1 uses is important
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#### 4.4 Local Member Representations

No representations received to date

### 5.0 **EVALUATION**

The principle of an A3 use in this location is acceptable in policy terms; the site is currently vacant and is situated with the Central Shopping Area.

The main issues that arise in the consideration of this application are the following:

#### 5.1 Visual Impact

- 5.1.1 There is a proposed flue to the north east elevation, final details regarding finishing materials, height etc. to be submitted at a later stage. This application establishes the principle of the A3 use in this location with the requested opening hours, the applicant intends to provide full details of the extraction system to be determined as a formal discharge of condition application. (In this case all relevant consultations are undertaken as part of this application including consultation with neighbouring properties, Conservation, Environmental Health). The principle of an extraction flue in this location (that meets the requirements of environmental health in terms of noise and odour mitigation) is acceptable in principle given that this building has no distinct design or style that needs preserving and does appear as a functional building situated to the rear of the main retail street.

#### 5.2.1 Neighbour Impact

- 5.2.2 The main issue that arises with this proposal given this central shopping location is that of residential amenity and the impact of the proposal upon the residents that live in the nearby residents of Beaufort Arms.
- 5.2.3 The issue of noise and smell is addressed by an appropriate extraction system that will be subject to a further application and must meet the requirements of Environmental Health in addressing noise and smells. Conditions are recommended accordingly.
- 5.2.4 As this is a takeaway, the use is contained within the building and there is no external seating. The potential disturbance arises from people entering and leaving the site. In this case all visitors must access the takeaway from the pedestrian access on the Barton which is out of viewpoint of Beaufort Arms and noise and disturbance is effectively partly blocked by the existing building. All customers must use the car park and cannot access the yard (conditions recommended accordingly) this is to be used for staff car parking only. The potential disturbance from vehicular traffic manoeuvring within the enclosed yard adjacent to the shared amenity space belonging to Beaufort Arms is not considered to be significant in this case by virtue of the low vehicular numbers using the compound, good boundary material (in the form of a high boundary

wall and a mature tree separating the two uses) and the use is within the foreground of a large public car park.

5.2.5 The proposed hours of operation are until 11pm in the evening, this coincides with the closing times of other business and uses within close proximity of the application site. The nature of an Indian takeaway is one whereby people visit and leave, it does not encourage lingering where people can eat from the containers outside the unit ( like a fish and chip shop or kebab shop) so a condition is recommended that the user be limited to an Indian Takeaway only and for no other use. It is recommended that a closing time of 10:30pm is recommended for Sundays and Bank Holidays again to coincide with the closing times of the adjacent uses.

5.2.6 The proposal has been designed to ensure visitors both pedestrian and vehicular are on the opposite side of the building to that of the neighbouring residential properties. This is set within a Central Shopping Area where A3 uses are considered to be acceptable, the site is situated within close proximity of other A3 uses and there is a satisfactory separating distance between the application site and Beaufort Arms for the impact upon neighbour amenity to not be significant in this case.

### 5.3 Other Issues Raised

The issue of littering and business rates is not a planning consideration. As this site is within a Central Shopping Area and not a Primary Shopping Area the number of A3 uses and Indian restaurants takeaways is not a consideration in this case.

### Response to the Representations of the Community/ Town Council Well-Being of Future Generations (Wales) Act 2015

The duty to improve the economic, social, environmental and cultural well-being of Wales has been considered, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (the WBFG Act). In reaching this recommendation, the ways of working set out at section 5 of the WBFG Act have been taken into account and it is considered that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives set out in section 8 of the WBFG Act.

## 6.0 **RECOMMENDATION: Approve**

### Conditions

1	This development shall be begun within 5 years from the date of this permission.
2	The development shall be carried out in accordance with the list of approved plans set out in the table below.
3	Prior to development commencing on site a noise mitigation scheme shall be submitted in writing and approved in writing by the local planning authority. The mitigation scheme should detail measures that will be implemented to ensure that any noise associated with the development does not cause detriment to the amenity or a nuisance to those living and working in the area.
4	Prior to development commencing on site a scheme containing full details of arrangements of internal air extraction , odour control and

	discharge to atmosphere from cooking operations including any external ducting and flues shall be submitted in writing and approved in writing by the local planning authority. The equipment shall thereafter be maintained in accordance with the manufacturer's instructions and operated at all times when cooking is carried out unless otherwise agreed beforehand in writing with the local planning authority.
5	The premises shall not be used for the approved purposes outside the following times 09.00h-23.00h, Monday to Saturday and 10.00h to 22.30h on Sundays and Bank Holidays.
6	The use shall be for an Indian Takeaway only and for no other use with the A3 use Class
7	The yard situated to the north of the building is to be used for staff car parking only
8	There shall be no external seating for customers
9	Pedestrian access will be via the Barton only on the south west side of the building