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| Agenda Item A11 | Committee Date 26 June 2017 | Application Number 17/00140/FUL |
| Application Site 5 Cheapside Lancaster Lancashire LA1 1LY | Proposal Change of use of shop (A1) to restaurant (A3) and installation of a flue to the rear | |
| Name of Applicant Mr Ali Ezdi | Name of Agent Greg Gilding | |
| Decision Target Date 12 May 2017 | Reason For Delay Committee Cycle | |
| Case Officer | Ms Holly Levy | |
| Departure | Yes | |
| Summary of Recommendation | Approve with Conditions | |

(i) Procedural Matters

The proposed development would normally fall within the Scheme of Delegation. However, the land to which this application relates is in the ownership of Lancaster City Council, as such the application must be determined by the Planning Committee.

1.0 The Site and its Surroundings

- 1.1 The property which forms the subject of this application is an existing, council owned unit situated on the eastern side of Cheapside close to Ashton Walk within Lancaster City Centre. At present the premises are unoccupied and the property has been vacant since October 2012, but it has previously been used for retail (A1 use) and has been marketed that way.
- 1.2 The property is a two story building with an attic and a shop frontage at ground floor level, and is part of a non-designated local heritage asset across both sides of Cheapside. Both of the neighboring units are currently operating within the A3 use class (No. 2-6 Costa Coffee and No. 7 Esquires Coffee).
- 1.3 Cheapside forms one of the main pedestrian shopping streets in the center of Lancaster, and is designated as a Primary Retail Frontage area. The property appears to date from the early 20th century, and is a positive building within the streetscape, situated within the Lancaster Conservation Area under the City Centre designation. Cheapside is an established retail area dating back to the 19th Century as a main shopping street.

2.0 The Proposal

- 2.1 Planning permission is sought for the change of use of this unit from a shop (A1) to a Turkish Restaurant (A3) and the installation of a flue to the rear.

3.0 Site History

- 3.1 No relevant planning history is held by the local planning authority for this address; however a similar

application has been permitted by the Local Planning Authority at No. 7 Cheapside in 2011 (11/00923/CU). Most recently an application for the change of use of No. 24 Cheapside from a Café to a betting shop was refused by the Local Planning Authority and over turned on appeal by the Planning Inspectorate (Appeal Ref: APP/A2335/W/16/3157337).

4.0 Consultation Responses

4.1 The following responses have been received from statutory and non-statutory consultees:

| Consultee | Response |
|------------------------------|--|
| County Highways Dept. | No objections received within the statutory timescales. |
| Environmental Health | No objections received within the statutory timescales. |
| Conservation Section | No objections received within the statutory timescales. |
| Property Services | No objections received within the statutory timescales. |

5.0 Neighbour Representations

5.1 No observations received within statutory timescale.

6.0 Principal National and Development Plan Policies

6.1 National Planning Policy Framework (NPPF)
 Paragraph 17. Core planning principles
 Section 2. Ensuring the vitality of town centres
 Section 7. Requiring Good Design
 Section 12. Conserving and enhancing the historic environment

6.2 Local Planning Policy Overview – Current Position

At the 14 December 2016 meeting of its Full Council, the local authority resolved to undertake public consultation on:

- (i) The Strategic Policies and Land Allocations Development Plan Document (DPD); and,
- (ii) A Review of the Development Management DPD.

This enabled progress to be made on the preparation of a Local Plan for the Lancaster District. Public consultation took place from 27 January 2017 to 24 March 2017. Whilst the consultation responses are currently being fully considered, the local authority remains in a position to make swift progress in moving towards the latter stages of: reviewing the draft documents to take account of consultation outcomes, formal publication and submission to Government, and, then independent Examination of the Local Plan. If an Inspector finds that the submitted DPDs have been soundly prepared they may be adopted by the Council, potentially in 2018.

The **Strategic Policies and Land Allocations DPD** will replace the remaining policies of the Lancaster District Core Strategy (2008) and the residual ‘saved’ land allocation policies from the 2004 District Local Plan. Following the Council resolution in December 2016, it is considered that the Strategic Policies and Land Allocations DPD is a material consideration in decision-making, although with limited weight. The weight attributed to this DPD will increase as the plan’s preparation progresses through the stages described above.

The **Review of the Development Management DPD** updates the policies that are contained within the current document, which was adopted in December 2014. As it is part of the development plan the current document is already material in terms of decision-making. Where any policies in the draft ‘Review’ document are different from those adopted in 2014, and those policies materially affect the consideration of the planning application, then these will be taken into account during decision making, although again with limited weight. The weight attributed to the revised policies in the ‘Review’ will increase as the plan’s preparation progresses through the stages described above.

- 6.3 Lancaster District Core Strategy (adopted July 2008)
ER4 – Town Centres and Shopping
SC1 – Sustainable Development
SC5 – Achieving Quality in Design
E1 – Environmental Capital
- 6.4 Lancaster District Local Plan - saved policies (adopted 2004)
S4 Lancaster City Centre Primary Retail Frontages
- 6.5 Development Management Development Plan Document (adopted July 2014)
DM1: Town Centre Development
DM2: Retail Frontages
DM5: The Evening & Night-time Economy
DM31: Development affecting Conservation Areas
DM33: Development Affecting Non-Designated Heritage Assets or their Settings
DM35: Key Design Principles
- 6.6 Other Material Considerations
Lancaster Conservation Area 3 – City Centre

7.0 Comment and Analysis

7.1 The main issues are:

- The Acceptability of the Use; and,
- The Impact on the Lancaster Conservation Area.

7.2 Acceptability of Use

7.2.1 This unit is located within Lancaster City Centre and has been vacant since October 2012 with ad hoc temporary occupations by Lancaster University and Army Recruitment. Prior to this the property had operated as a retail unit (A1 Use).

7.2.2 The building forms part of a designated Primary Retail Frontage, which are identified due to their importance to the town centre. DM DPD Policy DM2 is relevant and states that *“The primary purpose of this policy is to promote town centre A1 retail uses on prime frontages within the defined town centre boundary which can generate active street frontages during normal daytime trading hours”*. The policy further states that *“proposals within primary retail frontages which involve the change of use of ground floor premises to non-A1 uses will only be permitted where:*

- 1. All adjoining frontages have an A1 retail use which generates an active street frontage during normal daytime trading hours; and*
- 2. The proposal ensures that all uses on the ground floor provide an active street frontage that would be open during normal daytime trading hours; and,*
- 3. The proposal does not result in the proportion of non-A1 uses exceeding 20% of continuous retail frontage.”*

7.2.3 The units on either side of the appeal property are currently in non-A1 use, both properties are operating as coffee shops (A3 Use) and the proposal would therefore fail to comply with criterion (i) of Policy DM2.

7.2.4 Additionally the primary retail frontage of which the application site forms part of, measures approximately 187.5m in length. There are 3 current units operating within A3 uses (No. 2-6 Cheapside, No. 7 Cheapside and No. 1 Rendsburg Way) within this primary retail frontage which have a combined frontage operating in a non-retail uses as 47.5m. Accordingly, currently 25% of this continuous retail frontage is already operating within A3 uses contrary to criterion (iii) of Policy DM2.

7.2.5 Since it became vacant in October 2012 the unit was marketed externally by way of a chartered surveyor (Morgan Martin), without success. The City Council has since taken the marketing of the unit in house, a To-Let sign has been located at the unit and it appears on both the Council’s website and third party websites, including Costa. During this time there has only been one interested party

prior to the applicant, however sufficient rent was not offered to secure the premises.

- 7.2.6 The applicant proposes the use of the premises as a Turkish restaurant with the proposed opening hours of 08.00-23.00 Monday to Thursday, 08.00-02.00 Friday and Saturdays and 10.00 to 23.00 on Sundays and Bank Holidays.
- 7.2.7 Whilst the proposal represents a departure from Policy DM2, the proposed opening hours would still provide an active street frontage during normal daytime hours and the proposed use would attract levels of footfall that would support the vitality of the area, which whilst not an A1 use, is the aim of the policy.
- 7.2.8 In 2016, the Local Planning Authority refused an application for the change of use of No. 24 Cheapside from a café (A3) to a betting shop (sui-generis) on the grounds that the proposal did not meet the policy requirements of Policy DM2, in that it was a non-retail use proposed within a Primarily retail frontage. The Local Authority's decision was overturned on appeal by the Planning Inspector, who reasoned that the property had been vacant for almost 2 years and the proposed opening hours would provide an active street frontage and bring the unit back into use, which overall would have a positive impact on the vitality and viability of the city centre. Whilst that appeal decision does not set a precedent (relating to a different site), and accepting that each case is considered on its own merits, the lack of an appropriate tenant in the intervening 4.5 years at the application site is a material consideration.
- 7.2.9 On balance, and assuming that the opening hours will ensure daytime opening, there would be no harm to the vitality and viability of the centre arising from the development. The proposal would bring this unit back into use which would also support the vitality of the area.

7.3 Impacts upon the Lancaster Conservation Area

- 7.3.1 The only external alteration proposed to the building is the installation of a flue to the rear, to be used in connection with the proposed A3 use. The rear of the property is contained within a secure internal court yard and is not publicly visible. Given this, it is considered that the proposal will not have an undue impact on the setting, character or significance of the Conservation Area (DM Policy 31) and is therefore considered to be acceptable. Environmental Health have also raised no operational objections with regard to the proposed flue.
- 7.3.2 Therefore the proposal is considered to be consistent with policy DM31 and NPPF Section 7 and Section 12.

8.0 Planning Obligations

- 8.1 There are none to consider as part of this application.

9.0 Conclusions

- 9.1 For the above reasons, it is considered that the development would not harm the vitality and viability of Lancaster City Centre. Whilst it would not strictly accord with Policy DM2 of the Lancaster District Development Management DPD (2014) no harm would arise from this conflict.
- 9.2 The development would bring a prominent vacant unit back into use, which would support the vitality of the town centre. Consequently it is considered that, these considerations outweigh the failure to comply with the development plan in this specific instance. In this regard, the proposal would also be in accordance with the National Planning Policy Framework, which seeks to support the vitality and viability of town centres.
- 9.3 To ensure that the unit provides restaurant-style seating, a further internal layout plan has been requested. The aim of this is to ensure that the internal layout is genuinely laid out as a restaurant (to avoid a situation where a couple of chairs and tables are provided, but the unit becomes used for a quasi-restaurant/takeaway use, which then has planning enforcement implications. Details of this amended plan will be presented verbally to Members.

Recommendation

That Planning Permission **BE GRANTED** subject to the following conditions:

1. Standard three year time condition
2. Development to accord with plans
3. Opening Hours (0800-2300 Monday to Friday; 0800-0200 Saturday, and 1000-2300 Sunday)

Article 35, Town and Country Planning (Development Management Procedure) (England) Order 2015

In accordance with the above legislation, the City Council can confirm the following:

In accordance with the above legislation, the City Council can confirm that it has made the recommendation in a positive and proactive way to foster the delivery of sustainable development, working proactively with the applicant to secure development that improves the economic, social and environmental conditions of the area. The recommendation has been taken having had regard to the impact of development, and in particular to the relevant policies contained in the Development Plan, as presented in full in the report, and to all relevant material planning considerations, including the National Planning Policy Framework, National Planning Practice Guidance and relevant Supplementary Planning Documents/ Guidance.

Background Papers

None