
Report of the Chief Planning Officer

CITY PLANS PANEL

Date: 12 FEBRUARY 2015

Subject: PLANNING APPLICATION REF. 14/05288/FU CHANGE OF USE OF PART OF GROUND FLOOR TO A5 (HOT FOOD TAKE AWAY), INSTALLATION OF DUCT AND EXTRACT TO REAR, AND ADDITION OF NEW DOOR TO SHOP FRONT AT 34 KIRKGATE, LEEDS LS2 7DR

APPLICANT

Papa John's (GB) Ltd.

DATE VALID

10.09.2014

TARGET DATE

25.02.2015 (extended)

Electoral Wards Affected:

City and Hunslet

☐ Yes

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity ☐

Community Cohesion ☐

Narrowing the Gap ☐

RECOMMENDATION:

GRANT planning permission subject to the conditions specified at Appendix 1.

1.0 INTRODUCTION:

1.1 This application is brought to City Plans Panel at the request of City and Hunslet Ward Member, Councillor Iqbal, due to concerns regarding:

- Odour from the installation of the extraction system would exacerbate existing hot-food odours from other premises in the area, meaning that residents would not be able to open their windows
- Noise from the take-away, and from deliveries to and from the shop and refuse collections
- Fire safety concerns regarding the extract duct
- Negative impact on the architectural and historic character of the area
- Traffic problems resulting from inadequate servicing/refuse facilities leading to highways safety issues

- Increased litter
- Overconcentration of take-aways, pubs and bars in the area

2.0 PROPOSAL:

- 2.1 The application proposal is for the change of use of part of the ground floor (78.6sqm) to A5 hot food take away use, installation of extract flue to rear in the yard access off Harper Street, and the provision of a new door to the shop front. The proposal would involve the subdivision of the existing vacant ground floor unit into a take-away and a unit which benefits from planning permission for A1 retail and/or café/restaurant uses. The proposal would include a pizza delivery business, with food cooked on site and delivered to homes and businesses in the local area, ordered either in person, over the phone or on the internet. The applicant has provided details of an external bin store, located in the yard off Harper Street. The applicant has also confirmed that the take-away would not operate after 11pm each day.
- 2.2 A number of documents were submitted in support of the application:
- Scaled Plans
 - Planning Statement
 - Extract system and plant scheme report
 - Noise and sound insulation scheme report

3.0 SITE AND SURROUNDINGS:

- 3.1 The application unit consists of a vacant ground floor retail unit, which also benefits from planning permission for café/restaurant use. The unit has been vacant for a number of years, although it has been recently occupied as a pop-up art gallery. The site lies within the designated City Centre Prime Shopping Quarter. This part of Kirkgate is designated as a Secondary Shopping Frontage. The surrounding area is a very busy, vibrant part of the City Centre, along a main pedestrian route to the nearby bus station. It is characterised by a wide variety of uses including residential at upper floors, public houses/bars, a credit union, amusement arcade, hot food takeaway, office, café and shop uses. The upper floors of this building, the building opposite at 4-12 Harper Street, and those adjoining to the west along Kirkgate, have all been converted to flats in recent years.
- 3.2 The building is an attractive Victorian red-brick four storey curved building, with a well-detailed traditional timber shopfront. There is a rear yard which services the properties along the north side of Kirkgate and the south side of New York Street. The site lies within the City Centre Conservation Area, and opposite the Lower Kirkgate Townscape Heritage Initiative area.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 14/06023/ADV Four illuminated and four non-illuminated signs – pending consideration
- 4.2 12/04976/FU Change of use of shop to Class A3 (restaurants/cafe) approved for the whole of this ground floor unit - not implemented and expires 14 February 2016
- 4.3 20/342/01/FU Change of use, new shopfronts and alterations of 1st 2nd and 3rd floor to 24 dwellings - approved and implemented.

5.0 HISTORY OF NEGOTIATIONS

5.1 No pre-application discussions took place.

6.0 PUBLIC/LOCAL RESPONSE:

6.1 Planning application publicity consisted of a Site Notice posted 19.09.2014

6.2 City and Hunslet Ward Member, Councillor Iqbal, objects to the proposal and has requested that it be determined by City Plans Panel.

6.3 3 objections have been received from residents of the flats above, stating the following concerns:

- Odour from the installation of the extraction system would exacerbate existing hot-food odours from other premises in the area, meaning that residents would not be able to open their windows
- The relationship of the takeaway door to the front door of the flats
- Noise from the take-away, and from deliveries to and from the shop and refuse collections
- Fire safety concerns regarding the extract duct
- Negative impact on the architectural and historic character of the area
- Traffic problems resulting from inadequate servicing/refuse facilities leading to highways safety issues
- Increased litter

7.0 CONSULTATIONS RESPONSES:

7.1 Statutory:
None

7.2 Non-statutory:

7.2.1 LCC Transport Development Services:

No objection, the proposal would not give rise to adverse road safety issues, subject to a condition requiring an acceptable provision for pizza delivery parking, waiting and loading.

7.2.1 LCC Environmental Protection:

The application premises are in a mixed use city centre location with several cafes and takeaways in the close vicinity. There are also a number of residential flats above the application building and opposite on Harper Street. Environmental Protection often receives noise complaints from nearby residents when commercial uses have operated into the early hours of the morning. These complaints have included disturbance from revellers in the street as well as noise from the activities within commercial premises. The premises are also within the city centre cumulative impact policy (CIP) area for Licensed premises (Red Area – under review). Hot food establishments that open beyond 11pm are deemed to be in scope of the policy and so this development is not relevant to it.

No objection to the proposal subject to conditions regarding:

- Unit opening times 8am to 11pm
- Unit delivery times (8am to 18:30 hours Monday to Saturday and 9am to 13:00 hours on Sundays and Bank Holidays)
- implementation of the submitted extract ventilation scheme
- implementation of submitted sound insulation scheme
- provision of grease trap for any food businesses
- provision of a litter management plan

- details of refuse storage

7.1.3 LCC Conservation Team

Subject to further details the new door is acceptable, as is the flue at the rear if it is painted black. There were concerns with the proposed internal arrangement. Part of the positive character of the shopfront is the high level of visibility into the property. The original scheme proposed a number of stud walls and fridges etc immediately behind the glass. This would have created a negative barrier, which revised plans have now resolved. The unit should be reconfigured to allow a more open positive character in this space, and to avoid a negative impact on the character of the building and the wider conservation area. The building is a positive feature in the conservation area and lies directly opposite the Lower Kirkgate Townscape Heritage Initiative area, where external funding has been secured for the sensitive regeneration of the area.

8.0 PLANNING POLICIES:

8.1 Development Plan

8.1.1 Leeds Core Strategy 2014

The Core Strategy sets out strategic level policies and vision to guide the delivery of development investment decisions and the overall future of the district.

Spatial Policy 1 sets out the broad spatial framework for the location and scale of development. This policy prioritises the redevelopment of previously developed land within Main Urban Area, in a way that respects and enhances the local character and identity of places and neighbourhoods.

Spatial Policy 3 Role of Leeds City Centre seeks to maintain and enhance the role of the City Centre as an economic driver for the District and City Region, by

- comprehensively planning the redevelopment and re-use of vacant and under-used sites for mixed use development and areas of public space,
- enhancing streets and creating a network of open and green spaces to make the City Centre more attractive
- improving connections between the City Centre and adjoining neighbourhoods
- Expanding city living with a broader housing mix

Core Strategy Policy CC1 outlines the planned growth within the City Centre, and states that all town centre uses will be supported within the City Centre boundary provided the use does not negatively impact on the amenity of neighbouring uses and that the proposal is in accordance with all other Core Strategy policies. It also states that a concentration of shops with ground floor frontages should be maintained in the Prime Shopping Quarter for reasons of vitality. Proposals for non-retail use should not result in the proportion of retail frontage length falling below 80% in Primary Frontages or below 50% in Secondary Frontages. Proposals for uses outside of the "A" class will not be permitted within designated ground floor frontages.

Policy P10 requires new development to be based on a thorough contextual analysis to provide good design appropriate to its scale and function, delivering high quality innovative design and enhancing existing landscapes and spaces.

Policy P11 states that the historic environment including locally significant undesignated assets and their settings will be conserved and enhanced, particularly those elements which help to give Leeds its distinct identity.

Policy T2 identifies transport management and accessibility requirements for new development.

Policy P4 states that:

Proposals for the change of use of existing retail units to non retail units (including restaurants, cafes and take-away hot food shops) will be resisted where the vitality and viability of the range of shops to meet day to day local needs will be undermined and increase the need to travel or where the proposal will lead to a concentration of non retail uses in a locality which will detrimentally impact on the community.

Proposals for such uses will be considered against the following criteria:

- (i) The cumulative impact of such development, particularly upon the amenity of the area and traffic generation, especially where concentrations of such uses already exist,
- (ii) Where a proposal involves evening opening, account will be taken of the proposal in relation to the proximity of the premises (and associated parking requirements), to nearby residential accommodation, the nature and character of the neighbourhood parade and existing noise levels;
- (iii) The availability of public transport, convenient on/off street car and cycle parking provision and impact on highway safety. Where there is insufficient car parking or where traffic movements are such as to create a traffic hazard, planning consent is likely to be refused.

8.1.2 Leeds Unitary Development Plan Review 2006 (UDPR) Saved Policies

Relevant policies include:

GP5 all relevant planning considerations, including road safety and amenity

BD4 all mechanical plant

BD6 all alterations

BD7 shopfronts

SF1A non-retail uses in shopping frontages

SF3 secondary shopping frontages

S4 Retail character

8.1.3 Informal Supplementary Planning Guidance

Lower Kirkgate Planning Statement 2011

This site lies opposite the area covered by the Lower Kirkgate Planning Statement and the Lower Kirkgate Townscape heritage Initiative. The Lower Kirkgate Planning Statement provides conservation, land use, urban design, connectivity and movement, public realm and sustainability objectives for the sensitive and sustainable regeneration and restoration of this area.

8.2 National Planning Policy Framework (NPPF)

The National Planning Policy Framework (NPPF) came into force in March 2012 and represents the government's commitment to sustainable development, through its intention to make the planning system more streamlined, localised and less restrictive. It aims to do this by reducing regulatory burdens and by placing sustainability at the heart of development process. The National Planning Policy Framework (NPPF) sets out the Governments planning policies for England and how these are expected to be applied, only to the extent that it is relevant, proportionate and necessary to do so.

The NPPF identifies 12 core planning principles (para 17) which include that planning should:

- *'Proactively drive and support sustainable economic development*

- *Seek high quality design and a good standard of amenity for existing and future occupants.*
- *Encourage the re-use of existing resources, including conversion of existing buildings.*
- *Conserve heritage assets in a manner appropriate to their significance.*
- *Actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling.'*

Paragraph 123 of the NPPF states that:

'Planning policies and decisions should aim to:

- *avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;*
- *mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;*
- *recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established;'*

The NPPF makes reference to the Government's Noise Policy Statement – this aims to:

- *avoid significant adverse impacts on health and quality of life*
- *mitigate and minimise adverse impacts on health and quality of life*
- *where possible, contribute to the improvement of health and quality of life*

This policy should be followed by anyone making a decision that could affect the noise we experience, so that noise issues:

- *are considered early on in the decision-making process*
- *are not considered in isolation*

British Standard BS4142 sets out methods for determining the level of noise affecting mixed residential and industrial areas. It is recommended that during normal daytime hours (0700 to 2300 hours), the BS4142 rating level, measured over 1 hour, should be 5dB below the background (LA90). During the night-time period (2300 to 0700 hours), the BS4142 rating level, measured over 5 minutes should be 5dB below the background (LA90).

Section 7 of the NPPF states that good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. It is important that design is inclusive and of high quality. Key principles include:

- *Establishing a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit;*
- *Optimising the potential of the site to accommodate development;*
- *Respond to local character and history;*
- *Reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation;*
- *Create safe and accessible environments; and*
- *Development to be visually attractive as a result of good architecture and appropriate landscaping.*

MAIN ISSUES

- 9.1 Principle of use
- 9.2 Residential amenity
- 9.3 Transport
- 9.4 Visual impact of the proposed external alterations on the character and appearance of the host building and the conservation area

APPRAISAL

9.1 Principle of use

- 9.1.1 The proposed use would be acceptable in the context of both national and local planning policy, as a use that should be located in a designated town or city centre. The site lies within the designated Prime Shopping Quarter of the City Centre. A range of generally complementary and supportive land uses will actively be encouraged which can serve local residents, worker and visitors, and ensure life, vitality and variety throughout the day and night in the Prime Shopping Quarter. Under Core Strategy Policy CC1 and Saved UDPR Policy SF3, the application premises lie within a designated secondary shopping frontage. Under these policies, at least 50% of the frontage length should be maintained as A1 retail use. However, the balance of retail use has been lost over time, and this longstanding vacant unit is the last A1 retail unit in the frontage. Since the 2001 allocation of this frontage the retail function has reduced. The Council's adopted policies recognise that the minimum 50% requirement for A1 use in secondary frontages is a guide and that under certain circumstances such as a change in the retail character of the area, or long-standing vacancy levels then a loss of A1 retail use may be acceptable. The proposed use is considered complementary to a more diverse leisure and food economy that is now established in this part of the City Centre. The unit has also been vacant for a number of years and been marketed as A1 retail and A3 café/restaurant use without success. It is considered that in these circumstances, a take-away use in part of the unit is appropriate subject to residential amenity considerations.
- 9.1.3 In this case, it is considered that on balance the principle of the proposal is acceptable to bring the unit back into a viable use, which would provide 5 full time and 20 part-time jobs, and increase levels of activity and footfall in the area.

9.2 Residential Amenity

- 9.2.1 In assessing the scheme against Core Strategy Policy P4 (i) it is considered that the cumulative impact of this development, particularly upon the amenity of the area and traffic generation, especially where concentrations of similar uses already exist, would not result in an overconcentration of such uses sufficient to cause significant additional impacts on residents. The site lies within a vibrant, 24 hour part of the City Centre, and such uses are part of its character. Residential dwellings are in close proximity - directly above, adjacent and opposite the unit. Other uses in the immediate vicinity include retail, cafés, public houses, financial services, take-aways, and a number of other vacant shop units on the south side of Kirkgate.
- 9.2.2 With reference to part (ii) of Policy P4, where a proposal involves evening opening, account will be taken of the proposal in relation to the proximity of the premises (and associated parking requirements), to nearby residential accommodation, the nature and character of the neighbourhood parade and existing noise levels. It is considered that in this busy, late night use environment, that in order to minimise the risk of additional disruption by entertainment uses to residents, that opening hours of 8am to

11pm are appropriate, with 8am-8pm restrictions on deliveries to the premises and servicing Monday to Saturday (with none on Sundays or Bank Holidays).

- 9.2.3 The applicant has confirmed that they would adhere to restrictions to opening times to 8am to 11pm on any day of the week, and restrictions to delivery and refuse collection times to 8am to 8pm Monday to Saturday and none on Sundays and Bank Holidays.. It is considered that these measures would minimise the potential for additional noise and disturbance from the application premises in the context of the existing busy mixed use nature of the area.
- 9.2.4 A sound insulation and extract plant scheme, including details of odour filtration, has been submitted and Environmental Protection have confirmed that the proposed measures would be sufficient to prevent loss of amenity to the residents nearby. This would require any noise generated by the premises or its mechanical services to be inaudible above background noise levels inside nearby residential properties.
- 9.2.5 A covered, enclosed bin store would be required for these premises in order to avoid the risk of adverse impact on the amenities to the flats above, especially to the potential for odour nuisances to the windows and balconies.
- 9.2.6 A condition is recommended that would require the applicant to provide a litter management plan, to prevent any potential litter nuisance arising directly from these premises.
- 9.2.7 It is therefore considered subject to the above measures and restrictions, that the proposed hot-food takeaway use would not give rise to significant additional concerns regarding the amenities of nearby residents, given the busy character of this part of the City Centre, which features a wide variety of uses, some of which are late-night or 24 hour.

9.3 Transport

- 9.3.1 The application site is well served by bus and rail services, and nearby city centre multi-storey car parks. The local streets are heavily controlled by traffic regulation orders relating to parking and loading. A properly managed bin store would minimise the potential for vehicular safety issues within the rear yard off Harper Street. Pizza delivery vehicles would use the on-street bays on Kirkgate, or off-street car parks at Crown Street or the Markets. Subject to the control of the arrangements for pizza delivery vehicles by condition it is considered that the proposal would not raise any specific road safety issues.
- 9.3.2 Part (iii) of Policy P4 states that consideration be given to the availability of public transport, convenient on/off street car and cycle parking provision and impact on highway safety. It states that where there is insufficient car parking or where traffic movements are such as to create a traffic hazard, planning consent is likely to be refused. In this case, there is very good access to public transport, convenient off-street parking (Crown Street and the Markets car parks) and on-street parking along Kirkgate. Highways Officers are satisfied that this proposal is unlikely to result in road safety issues, subject to a condition requiring acceptable details of pizza delivery vehicle parking and waiting provision.

9.4 Visual impact of the proposed external alterations on the character and appearance of the host building and the conservation area

- 9.4.1 It is considered that the proposed alterations to the shopfront are minimal and would be in keeping with the scale, form, architectural features and materials of the host building. The revised layout would allow views in and out of the shopfront, with only a small area needing to be obscured to two glazed panels at a lower level. The treatment of windows with applied film would be controlled by condition. The proposed flue in the rear yard would be painted black to minimise its visual appearance. In the context of the view down the yard, the flue would only be visible when passing, and would be typical of the type of plant and machinery found in such service areas. The proposed alterations would allow the ground floor premises to bring into a viable economic use. On balance, the proposal would be acceptable in visual impact terms, and would preserve the character and appearance of the Conservation Area.

10.0 CONCLUSION

- 10.1 The application proposal would bring into use a longstanding vacant premises in a frontage which has lost a significant part of its A1 retail character. This can therefore be supported in principle by national and local planning policies, and would contribute positively to the local economy.
- 10.2 Given the context of the site location in a mixed use area of the City Centre, it is considered on balance that subject to the proposed planning conditions the proposal would not have a significant additional adverse impact on existing amenities. The proposal is considered to meet all other highway, road safety, environmental health, and planning requirements, and would not adversely affect the character of the conservation area. Therefore the proposal is considered to be supported by local and national planning policies, and is recommended for approval.

Background Papers:

Application file 14/05288/FU

Appendix 1

Draft Conditions

Appendix 1 Draft Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Imposed pursuant to the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the Plans Schedule.

For the avoidance of doubt and in the interests of proper planning.

- 3) The approved external extract ventilation system/air conditioning plant shall be installed and maintained in accordance with the approved details. The system shall limit noise to a level at least 5dBA below the existing background noise level (L90) when measured at the nearest noise sensitive premises with the measurements and assessment made in accordance with BS4142:1997.

In the interests of visual and residential amenity and in accordance with adopted Leeds UDP Review (2006) policy GP5 and the National Planning Policy Framework.

- 4) The approved details for the provision of bin stores (including siting, materials and means of enclosure) and (where applicable) storage of wastes and access for their collection shall be implemented in full before the use commences and shall be retained thereafter as such for the lifetime of the development.

In the interests of amenity and to ensure adequate measures for the storage and collection of wastes are put in place in accordance with adopted Leeds UDP Review (2006) policy GP5 and the National Planning Policy Framework.

- 5) The premises shall only be open to the public between 08.00 to 23.00 hours and not outside these hours.

In the interests of residential amenity in accordance with adopted Leeds UDP Review (2006) policy GP5 and the National Planning Policy Framework.

- 6) Collections from the premises and deliveries of goods to the premises shall be restricted to 08:00-20:00 hours Monday to Saturday and none on Sundays and Bank Holidays.

In the interests of residential amenity in accordance with adopted Leeds UDP Review (2006) policy GP5 and the National Planning Policy Framework.

- 7) Any music or amplified sound including tannoy systems used shall not be audible outside the application unit.

In the interests of residential amenity and in accordance with adopted Leeds UDP Review (2006) policy GP5 and the National Planning Policy Framework.

- 8) The approved sound insulation scheme shall be carried out prior to the use being commenced and shall thereafter be retained for the lifetime of development.

In the interests of residential amenity and in accordance with adopted Leeds UDP Review (2006) policies GP5 and the National Planning Policy Framework.

- 9) The use approved shall not commence until the details submitted of measures to treat odour and fumes from processes carried on within the site have been installed and they shall be maintained in accordance with the approved details.

In the interests of residential amenity and in accordance with adopted Leeds UDP Review (2006) policy GP5 and the National Planning Policy Framework.

- 10) Prior to commencement of the use, a Litter Management Plan, to include details of regular litter picking around the site and the provision of additional litter bins outside the site, if appropriate, shall be submitted to and approved in writing by the Local Planning Authority. The approved Litter Management Plan shall be implemented in accordance with the approved details and the premises shall thereafter not be operated except in accordance with the approved Plan.

To control the deposit of litter and in accordance with adopted Leeds UDP Review (2006) policy GP5 and the National Planning Policy Framework.

- 11) The application of obscure film or window vinyls to any glazed part of the shopfront shall be in accordance with the submitted approved details.

In the interests of the visual amenities of the host building and in order to preserve the character and appearance of the Conservation Area, in accordance with Leeds Core Strategy Policies P10 and P11, Saved Leeds UDPR Policies GP5, SF1A, BD6 and BD7 and the NPPF.

- 12) The extract ventilation flue hereby approved shall be painted black.

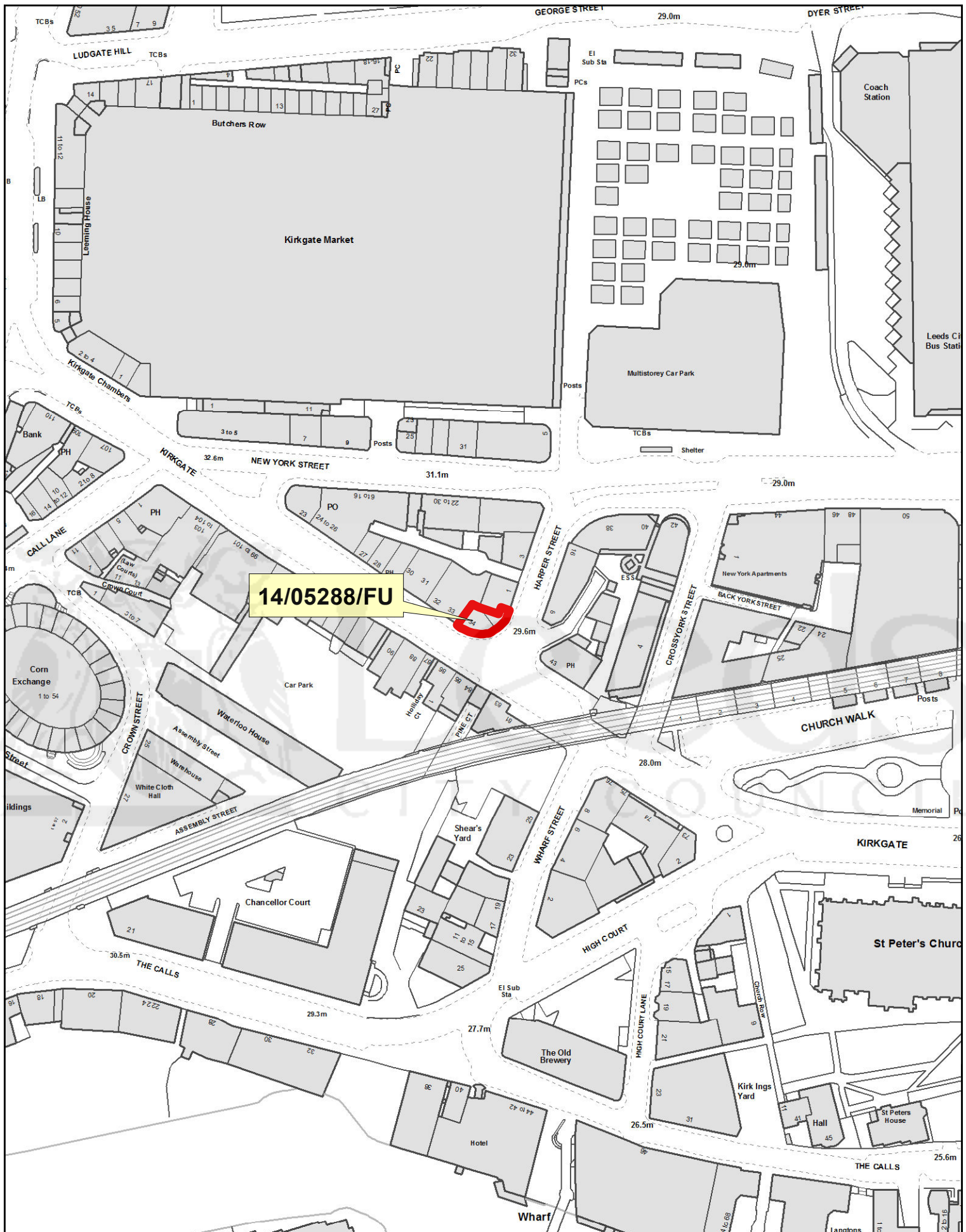
In the interests of the visual amenities of the host building and in order to preserve the character and appearance of the Conservation Area, in accordance with Leeds Core Strategy Policies P10 and P11, Saved Leeds UDPR Policies GP5, BD6 and BD7 and the NPPF.

- 13) Prior to the commencement of development, full details of all replacement windows and doors, cornice work, stall riser including treatment and colour details shall be submitted to and approved in writing by the Local Planning Authority. Full details of the windows including method of opening and drawings showing sections through mullions, transoms, glazing bars, sills and lintels, shall be provided at 1:5 scale. Development shall then be undertaken in accordance with the approved details.

In the interests of visual amenity and in order to preserve the character and appearance of the conservation area, in accordance with Leeds Core Strategy Policies P10 and P11, Saved Leeds UDPR Policies BD6 and BD7, and the National Planning Policy Framework

- 14) Prior to the first occupation of the use hereby approved, a customer delivery management plan shall be submitted to and approved in writing by the Local Planning Authority. This shall include details of where delivery vehicle parking, waiting and loading would take place for food deliveries from the premises to customers. Food deliveries to customers shall be carried out in accordance with the approved details thereafter.

In the interests of vehicular and pedestrian safety in accordance with Leeds Core Strategy Policy T2, Leeds UDPR Policy GP5 and the NPPF.



CITY PLANS PANEL

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PRODUCED BY CITY DEVELOPMENT, GIS MAPPING & DATA TEAM, LEEDS CITY COUNCIL

SCALE : 1/1500

