



Report of the Chief Planning Officer

PLANS PANEL NORTH & EAST

Date: 18th April 2013

Subject: APPEAL SUMMARY

Planning Application 11/05186/FU – Appeal by Mr M Miah against the decision of Leeds City Council to refuse planning permission for a change of use of restaurant (A3 within the Use Classes Order) to form a restaurant and takeaway (a mixed use of A3 and A5 in the Use Classes Order) at the Bengal Brasserie, 2 Victoria Court, Wetherby, LS22 6JB.

The appeal was allowed.

Electoral Wards Affected:

Wetherby

Yes

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

Members are asked to note the following appeal decisions.

1.0 BACKGROUND

- 1.1 This application sought to add a take-away function to an existing restaurant and the application set out that the proposal for a takeaway element was ancillary to the main restaurant use; that there would be no deliveries of food made from the premises and that the proposals did not require any physical alteration of the building. In view of the proximity of the building to residences, amenity issues, highways and parking were matters the Panel would need to consider.
- 1.2 To address any concerns, the applicant was willing to accept a condition requiring no takeaways beyond 10.00pm.
- 1.3 It was reported that highways had no concerns about the proposals. Accordingly the application was recommended for permission.

1.4 The Panel minutes record that:

“The Panel discussed the application with the following comments being made:

(i) The number of people the restaurant catered for, with concerns that this information had not been requested. As the applicant was in attendance, the Chair allowed him to respond to this matter, with Members being informed that 90 patrons could be accommodated in the restaurant.

(ii) Concerns relating to car parking and that there was insufficient parking in the area to cater for the additional takeaway element being proposed.

As the Panel seemed to be moving towards refusing the application, in line with the protocol for speaking at Plans Panels, the Chair invited the applicant to address the Panel:

RESOLVED - That the Officer’s recommendation to approve the application be not accepted and that refusal of the application based on concerns relating to harm to residential amenity and inadequate parking provision be deferred and delegated to the Chief Planning Officer.”

2.0 ISSUES IDENTIFIED BY THE INSPECTOR

2.1 The Inspector identified the main issues to be:

- Implications for vehicle parking within the car park at Victoria Court and the surrounding area.
- The effect on the living conditions of the occupiers of Victoria Court as a result of increased noise and disturbance.

3.0 SUMMARY OF COMMENTS BY THE INSPECTOR

3.1 Parking – The Inspector noted that there would be no delivery service so that all takeaway food would be collected from the premises and that the car park of Victoria Court has a total of 40 spaces, 24 of which are allocated to the residents of the Victoria Court apartments, with the other 16 spaces (including 2 disabled spaces) being available for customers of the Marks & Spencer store and the Bengal Brasserie.

3.2 The Inspector notes that there are warning signs at the entrance to the car park and within it to say that the car park is for the use of the residents in the designated spaces protected by collapsible bollards, and shop and restaurant customers for up to 90 minutes only.

3.3 Appendix 9 of the Unitary Development Plan Review (2006) (UDP) provides parking guidelines, and this provides the maximum parking requirement for the restaurant use without consideration of staff parking as 31 spaces. Accordingly, in terms of the existing situation there is a shortfall in relation to the UDP maximum guideline. The Inspector noted that the development at Victoria Court is relatively recent and considered that the level of parking provision was presumably viewed as adequate at the time planning permission was granted. Whilst he noted that the takeaway use

- 3.4 The Inspector considered that the restaurant and takeaway would be at their busiest during the evening. The M&S store closes at 20:00 hrs Monday to Friday, 19:00 hrs on a Saturday and 16:30 hrs on a Sunday and he found it a reasonable assumption that the 16 non-resident spaces would be more or less all available for use by customers of the restaurant and takeaway after these hours. He further found that due to the site's central location in the town it is likely that a proportion of customers would be on foot or use other means of transport than the private car. Public car parks are also available in the town centre within close proximity to the site which restaurant and takeaway users customers.
- 3.5 The Councils appeal statement raised concerns that if takeaway customers are unable to find a space at the Victoria Court car park they may park in unsuitable and inappropriate ways thereby blocking in other vehicles, restricting circulation space and pedestrian movements. The Council detailed in the appeal statement that there may be overspill on to nearby streets, in particular Victoria Street, reducing the kerb space for residents and other town centre users resulting in road safety, traffic management or environmental implications.
- 3.6 In response to the above the Inspector noted that unsuitable or inappropriate parking may occur from time to time if vehicle owners fail to observe the normal courtesies. However, he considered such behaviour as not necessarily harmful by allowing the appeal. Account was taken on the parking restrictions on Victoria Street and elsewhere in Wetherby, where Traffic Regulation Orders are in force throughout the town centre. The Inspector also noted that there are parking restrictions to the southwest side of Victoria Street where after 18:00 hrs on-street parking is permitted for up to 30 minutes.
- 3.7 In view of the above and that the Inspector considered that the A5 use would attract a small number of users at any one time the proposed A3/A5 use would be unlikely to require the parking requirements calculated in the LUDP and an additional A5 use in union with the existing A3 use would not have any significant implications for on-street parking and that there would be sufficient on-street space available after 18:00 hrs and the proposed use would not be harmful to local residents or existing businesses in respect of increased levels of on-street parking which would be harmful to road safety, traffic management or have environmental implications.
- 3.8 Living Conditions - The Inspector noted views expressed by a number of the residents of Victoria Court that the proposed A5 use would result in increased levels of late night vehicle and foot traffic having a negative impact on residential amenity, especially those on the lower floors of the building. However the Inspector took the view that residents of Victoria Court whose apartments overlook the car park are already subject to ambient noise and disturbance arising from the comings and goings of vehicles and customers of the M&S store and the restaurant both during the day and in the evening.
- 3.9 Given that the proposed A5 use would operate during the hours of opening of the restaurant the Inspector has taken the view that the possibility of additional activity that would cause harm to living conditions above those outside the existing opening hours would not occur.

- 3.10 It was found that the relatively low number of additional car and pedestrian movements which the introduction of the A5 use would generate would not materially alter the existing living conditions experienced by the residents of Victoria Court, even those on the lower floors.
- 3.11 The Inspector had regard for UDP policy SF15 which specifically deals with proposals for hot food takeaways (A5). This policy states that A5 is acceptable unless they are likely to raise concerns for residents' amenity by way of a number of factors *inter alia* noise and operation at unsocial hours.
- 3.12 It was noted that with regard to hours of operation SF15 indicates that where surmountable residential amenity concerns are raised, due to the close proximity of residential properties the hours of opening will normally be limited by condition to a closing time of 23:30 hrs. During negotiations during the application and as a suggested condition to the Inspector the Council proposed that the takeaway use should be limited to a closing time of 22:00 hrs on a trial basis; a time which the appellant agreed. The Inspector takes the view that given that the restaurant would be open until 23:30 hrs on Mondays to Saturdays and until 23:00 hrs on Sundays and Bank Holidays, there was no requirement to restrict the operation of the takeaway use to 22:00 hrs.

Conclusions

Parking

- 3.13 Parking - In view of the above and that the Inspector considered that the A5 use would attract a small number of users at any one time the proposed A3/A5 use would be unlikely to require the parking requirements calculated in the UDP and an additional A5 use in union with the existing A3 use would not have any significant implications for on-street parking and that there would be sufficient on-street space available after 18:00 hrs and the proposed use would not be harmful to local residents or existing businesses in respect of increased levels of on-street parking which would be harmful to road safety, traffic management or have environmental implications. Accordingly the Inspector took the view that the proposal would not conflict with UDP policies GP5 (Planning considerations), T24 (Car parking), T2 (Transport) or SF15 (Hot food takeaways) nor in conflict with the NPPF.
- 3.14 Living Conditions - On this second main issue the Inspector concluded that the proposal would not be harmful to the living conditions of the occupiers of Victoria Court by reason of the effect on noise and general disturbance and that the proposal met with the requirements of policy SF15.

Decision

- 3.14 The appeal was allowed 20th March 2013 subject to four conditions relating:
- Time limit (implemented within three years)
 - Development to be carried out in accordance with the approved plans.
 - Collection only, no take-away deliveries.
 - The take-away shall remain incidental to the main restaurant use.
 - Hours of operation: 08:00 until 23:30 Monday to Saturday and 11:00 until 23:00 on Sundays and bank and other public holidays.

4.0 IMPLICATIONS

4.1 One point of interest to note concerns the Inspector's approach to the issue of opening hours. Hours of operation for the take-away had been negotiated during the course of the consideration of the application that were less than those for the restaurant. However, the Inspector did not consider it necessary to restrict the permission in this way. This does highlight that on occasions the Council can lose benefits that it would have otherwise received if planning permission had been granted in the first instance. However, the decision maker always has to decide whether the development is considered to be acceptable on its own merits and then if any harm is identified the decision maker has to consider whether conditions can be imposed on a permission that would mitigate that harm. If conditions cannot be imposed that would overcome the harm then permission should be refused.

Background Papers

Planning Application File

Inspector's Decision Letter

11/05186 №

The Angel
Public House

11/05186 №
Horsefair

Existing
Carpark

Existing
Building

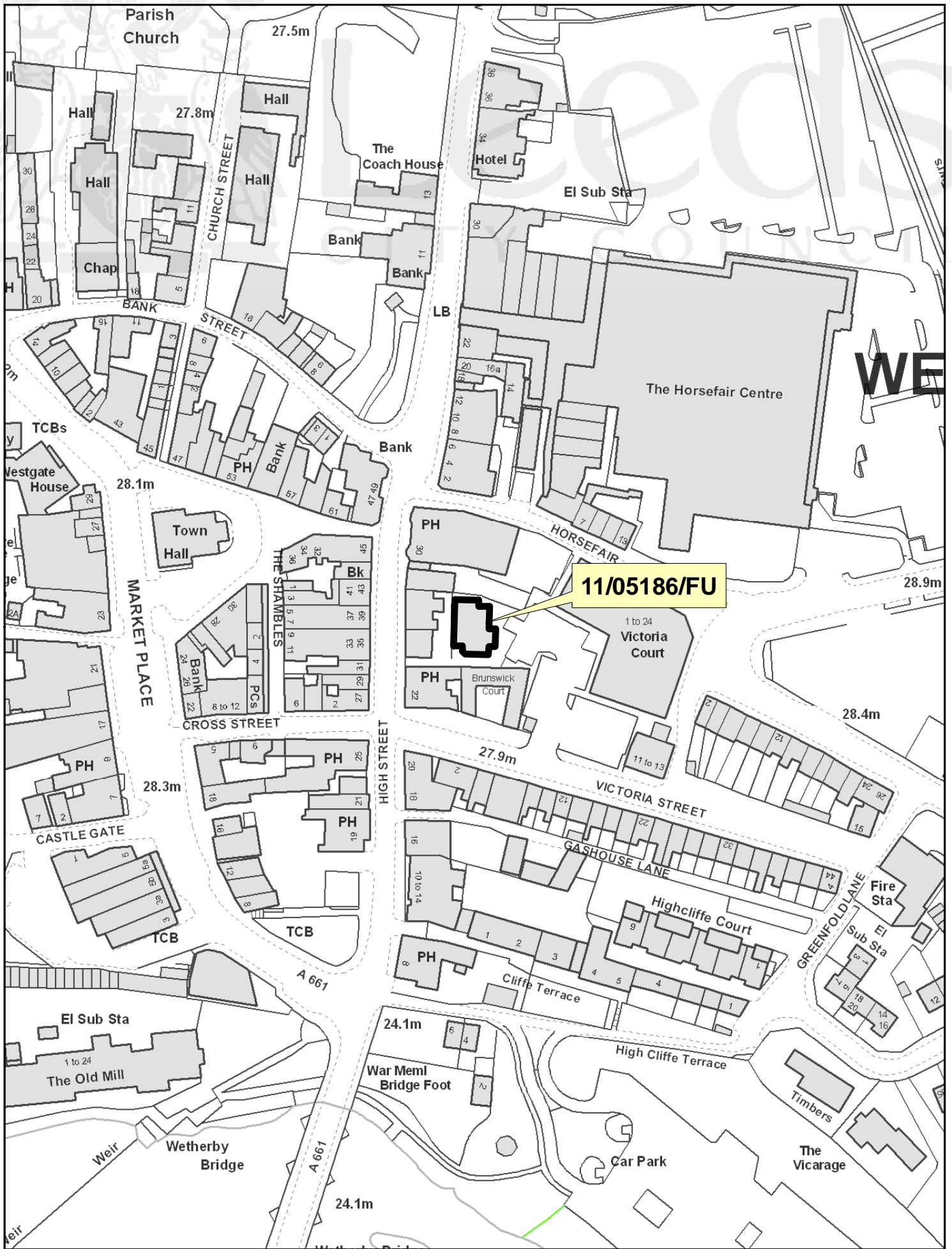
The Brunswick
Public House

Victoria Street

Existing Office
Building

PLANNING SERVICES
- 9 DEC 2011
DEVELOPMENT DEPARTMENT

High Street



EAST PLANS PANEL