



Report of the Chief Planning Officer

PLANS PANEL EAST

Date: 22 March 2012

Subject: APPLICATION 11/05186/FU – Change of use of restaurant (A3) to form restaurant and takeaway (A3 /A5) at the former Fennel restaurant building, 2 Victoria Court, Wetherby, LS22 6JB

APPLICANT
Bengal Brasserie

DATE VALID
9th December 2011

TARGET DATE
3 February 2012

Electoral Wards Affected:

Wetherby

Yes

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION: GRANT PERMISSION subject to the following conditions:

1. Time limit
2. The development hereby permitted shall be carried out in accordance with the approved plans listed in the Plans Schedule.
3. Restrict A5 use to 22:00hrs Monday to Sunday
4. No takeaway deliveries (to be for collection only)
5. The A5 function shall remain incidental to the A3 use for the life of the development.

Reasons for approval: This application has been considered in accordance with the requirements of the RSS and UDPR 2006 and policy guidance within PPS1, and PPS5. It is not considered that any significant impact would be introduced on the amenity of other nearby occupiers or to the visual amenity of the Conservation Area or have a harmful effect on parking and highway safety. The application is considered to comply with policies GP5, N19, SF15, S2, T and T24 as well as guidance contained within Wetherby Conservation Area Appraisal and Management Plan and having regard to all other material considerations, as such the application is recommended for approval.

1.0 INTRODUCTION:

1.1 This application was initially brought to the February Plans Panel at the request of Councillor John Procter who raised concerns on the grounds that the additional A5 (takeaway) function to the extant A3 (Restaurant/Café) use presents the potential for highway problems in terms of increased parking demand and increased noise and disturbance to the detriment of local residents. At the last Panel meeting the Panel agreed to defer the application to visit the site and see the parking situation following a request from Councillor Procter.

2.0 PROPOSAL:

- 2.1 The application seeks to change the use of a purpose built restaurant (Use A3) to include a takeaway function (Use A5).
- 2.2 The main business to operate from the premises would be the restaurant (to operate as the Bengal Brasserie) Although the applicant would like to offer the option of takeaway food. It is intended that patrons will be able to order the takeaway food at the premises (at the bar) or over the telephone. Patrons waiting for their takeaway food will wait in the waiting area also on the ground floor.
- 2.3 All takeaway food will be by collection only. The Company do not intend to operate a delivery service for the takeaway food and there will be no takeaway delivery vehicles coming and going from the premises

3.0 SITE AND SURROUNDINGS:

- 3.1 The application site is situated within the boundaries of Wetherby Conservation Area (Identified in the Wetherby Conservation Area Appraisal and Management Plan as Character Area 1) and the Town Centre.
- 3.2 Wetherby retains a strong historic character with a concentration of important historic buildings in the centre of the town, a number of which have Listed status. There is a uniform palette of materials and its historic street pattern are all key elements which contribute to its distinctive character.
- 3.3 The majority of buildings in the Conservation Area date from the late 18th or 19th centuries and are generally of fairly standard domestic form, of two or three storeys and respecting either classical Georgian or vernacular forms of design and proportion. The characteristic walling material in the Conservation Area is locally-quarried oolitic magnesian limestone, although pale grey limestone has been used in some recent buildings. Roofs are generally covered with Welsh slate and pantiles also occur on some historic buildings and provide an additional element in the street-scape.

- 3.4 In respect of the application site; the property is a modern detached, two storey red brick building under a pitched roof that previously traded as Fennels café and restaurant. The site is located north of Victoria Street and south of Horsefair. Opposite the application site is a medium scale retail unit (Marks and Spencers) with residential properties above, within the immediate area as well as other services one would expect within a town centre.
- 3.5 A car-park that serves the restaurant, retail and residential provides 40 parking with access into the car-park achieved from Victoria Street. The car-park operates a restrictive use of 90 minutes. However the residential parking is restricted for use by residents only with users of the retail and restaurant services have 14 designated parking spaces.
- 3.6 Whilst within the Conservation Area, the application site, the immediate residential and the retail unit are modern additions with the Conservation Area and town centre.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 31/246/05/FU - Detached two storey restaurant – Approved 26 August 2005
The hours of opening were restricted from 0800 hours to 2330 hours Monday to Saturday and 1100 hours to 2300 hours on Sundays.
- 4.2 31/61/01/FU - Mixed development comprising office units, 24 flat, retail and a change of use and extension to unit on High Street to form a cafe/restaurant with associated parking spaces to be provided – Approved 22 January 2002

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 Not applicable.

6.0 PUBLIC/LOCAL RESPONSE:

- 6.1 A site notice was posted 23rd December 2011 as affecting the character of a Conservation Area. The publicity expiry date was the 13th January 2012. At the time of the February plans panel no representations had been received. However since February three letters have been received from Mr Yiks Chinese take-away at No.4 Victoria Street and from the residents of Victoria Court, including a letter from the executor of a former resident of No.104 Victoria Court. The issues raised are:

- Noise and disturbance. The level of footfall and traffic movements would increase, especially at night.
- A take-away function could operate past the terminating time of the A3 use.
- Customers of the restaurant could use parking spaces allocated to residents of Victoria Court and Victoria Street.
- Vehicles belonging to staff of the Bengal Brasserie are parking without parking permits on Victoria Street.
- Residents feel that have been misled as the original planning application was for an A3 use but before the premises opened a take-away was being advertised and now that the Bengal Brasserie is open they are already operating an A5 function.
- Another take-away could be harmful to existing established businesses.
- There are already enough take-aways in the area.

- 6.2 The Town Council were notified 15th December 2011. Members of the Wetherby

Planning Committee have raised concerns on the impact of a takeaway trade on the local resident due to the additional traffic noise and the limited parking that is available in the immediate vicinity.

7.0 CONSULTATIONS RESPONSES:

Non-statutory:

7.1 Highways- No objections. It is considered that adding a take-away element to the existing restaurant use would not result in a material increase in the use of the site from a highway viewpoint. The site is located in the middle of the Wetherby S2 Centre which has extensive TRO's and is well served by public transport, it is considered that an objection on the grounds of an increased demand for parking would be difficult to justify in this case.

7.2 Environmental Protection Team – No objections

7.3 Licensing - On the 19 December 2011 the premises were granted a license for the sale of alcohol and recorded music – Monday to Sunday 11:00hrs to 23:00hrs.

Statutory:

7.4 None

8.0 PLANNING POLICIES:

8.1 The development plan includes the Regional Spatial Strategy to 2026 (RSS) and the adopted Leeds Unitary Development Plan (Review 2006) (UDP) along with relevant supplementary planning guidance and documents. The Local Development Framework will eventually replace the UDP but at the moment this is still undergoing production with the Core Strategy still being at the draft stage. The RSS was issued in May 2008 and includes a broad development strategy for the region, setting out regional priorities in terms of location and scale of development. The Publication Draft of the Core Strategy was issued for public consultation on 28th February 2012 with the consultation period closing on 12th April 2012. Following consideration of any representations received, the Council intends to submit the draft Core Strategy for examination. 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. As the Core Strategy is in its pre submission stages only limited weight can be afforded to any relevant policies at this point in time.

The site is located within the Wetherby Conservation Area and town centre as designated in the Leeds Unitary Development Plan Review (UDP) 2006. The site is also identified within the Wetherby Conservation Area appraisal and management plan as being within Character Area 1 of the Conservation Area.

8.2 Unitary Development Plan Review Policies:

Policy GP5 – refers to general amenity
Policy SF15 – refers to hot food takeaways
Policy S2 – refers to local centres
Policy N19 – refers to Conservation Areas
Policy T2 – Highway safety
Policy T24 – Parking provisions

8.3 Supplementary Planning Document – Neighbourhoods for Living.

- 8.4 Wetherby Conservation Area Appraisal and Management Plan (2010).
- 8.5 National Planning Policy
Planning Policy Statement 1 -Delivering Sustainable Development (PPS1).
Planning Policy Guidance 13 – Transport (PPG13)
Planning Policy Statement 5 - Planning for the Historic Environment (PPS5)
Planning Policy Statement 24 – Noise
Circular 11/95

9.0 MAIN ISSUES

Principle of development and sustainability
Impact of proposal on amenity and the character of the Conservation Area.
Highways
Representations

10.0 APPRAISAL

- Principle of development and sustainability.
- 10.1 The previous use of the unit was as Fennels café and restaurant, therefore the unit currently has an lawful A3 use. The proposed operator ‘Bengal Brasserie’ would operate the unit generally as an A3 use but are seeking planning permission for an additional takeaway function to the unit; which would result in the unit having an A3/A5 use class as defined in the Use Class Order. In respect of the A3 use class, no change would occur and therefore planning permission is not required for this aspect of the application. What must be considered is the introduction of an A5 element within the restaurant function. The restaurant function would be the main business; it is proposed that patrons will be able to order takeaway food at the premises or over the telephone; all takeaway food will be by collection only. There is no intention to operate a delivery service for the takeaway food and there will be no takeaway delivery vehicles coming and going to and from the premises. Patrons ordering food at the premises will do so at the ground floor bar/counter (as shown on drawing 303 – 7) and will wait in the waiting area also on the ground floor.
- 10.2 As the proposed A3/A5 use would be located within the town centre and would function from a premises that was purposely built for restaurant usage it is considered that the additional takeaway function would not form a significant part of the businesses operation nor would it form a separate planning unit. Moreover, an A5 use is considered to be an appropriate use within the local town centre. Therefore in principle the A3/A5 use can be accepted.
- Impact of proposal on amenity and the character of the Conservation Area.
- 10.3 Policy SF15 of the Leeds UDP (2006) states that proposals for new Hot Food Takeaways will not normally be acceptable unless they meet all the following requirements:

They are not likely to raise concerns for residents’ amenity by way of visual intrusion of flues, cooking smells, litter and food spillage, operation at unsocial hours, congregating of customers, parking and vehicle movements and noise and they will not adversely affect the character or appearance of a Listed Building or Conservation Area;

Given that the building is a purpose built restaurant it is unlikely that offering a takeaway function as part of the A3 operation thus not forming a separate planning unit, would cause any detrimental harm to the visual amenity of the original building,

the nearby Listed Buildings or the wider Conservation Area as the takeaway function would be contained within the existing property deemed to acceptable in its spatial surrounds when planning permission was granted in 2005. Any proposals for signage would require consent and an informative can be added to bring this to the applicants attention

10.4 It is acknowledged that in practice, takeaways can raise a number of problems and concerns which may differ in nature and/or degree from an restaurant/café use. Such problems can include long hours of operation, cooking smells, litter and food spillage, congregating of customers, parking and vehicle access, noise and the image of takeaways.

10.5 No's 1 to 24 Victoria Court located opposite the application premises and above the Marks and Spencers store are the properties that could be sensitive to the operations at the application site. It is therefore plausible to consider that a takeaway element could cause harm to the living conditions of neighbouring residents as a result the issues raised in para 10.4. However, in this instance the proposed takeaway use is not considered to be a function that would present any greater impact on living conditions than previously existed when Fennels restaurant operated from the premises and the restaurant function that will exist once the building is brought back into use by the applicant.

10.6 Policy SF15 of The Leeds UDP (2006) states that in cases where residential amenity concerns are raised, due to the close proximity of residential properties the hours of opening will normally be limited by condition to the following:

(a) Monday to Saturday - 08.00hrs to 23.30hrs.

(b) Sunday - 19.00hrs to 23.00hrs

The proposed opening hours for the restaurant (including the proposed takeaway function) would be from 08:00hrs until 23:30hrs Mondays to Saturdays and 11:00 hrs until 23:00 hrs on Sundays and bank Holidays.

Notwithstanding the above, it is considered that the takeaway service should be restricted until 22:00hrs thereby presenting the opportunity to monitor the proposed takeaway element and a planning application could therefore be submitted for consideration of a later operational hours once the takeaway function has established itself and local residents have the process to register any problems.

Highways

10.7 Concerns have been raised that the additional A5 use included within the extant A3 use of the premises would be problematic in highway terms and subsequently to the living conditions of residents. As part of the assessment of this application, technical advice was sought from Highways Officers. Highways Officers consider that by adding a takeaway element to the existing restaurant use would not result in a material increase in the use of the site from a highway viewpoint. The site is located in the middle of the Wetherby town centre which has extensive Traffic Regulation Orders. In light of the above Highways Officers consider that an objection on the grounds of an increased demand for parking would no be justified.

10.8 Moreover, there are 14 parking spaces allocated to the restaurant unit and Marks and Spencers, the remaining 26 parking spaces are allocated to the residential units of Victoria Court. It is reasonable to assume that the restaurant and the takeaway function will reach its busiest time later in the evening, more than likely after 18:00hrs. The Marks and Spencers store closes at 20:00hrs Monday to Friday,

19:00hrs on Saturdays and 16:30hrs on Sundays; therefore once the retail unit closes the parking options for the restaurant with its takeaway function would increase. As already stated in this report, there would be no deliveries of takeaway food and it therefore follows that there is no requirement by the applicant to have parked on or around Victoria Court vehicles to carry out such deliveries.

In addition to the above, the non-residential parking on Victoria Court is restricted to a 90 minute maximum stay, which would aid freeing up parking spaces on a frequent basis. While some customers may attend the site using vehicles, the property is located in the town centre in what is considered to be an accessible sustainable location.

Representations

10.9 A site notice was posted 23rd December 2011 as affecting the character of a Conservation Area. The publicity expiry date was the 13th January 2012. At the time of the February plans panel no representations had been received. However since February two letters have been received from Mr Yiks Chinese take-away at No.4 Victoria Street and from the residents of Victoria Court including a letter from the executor of a former resident of No.104 Victoria Court.. The issues raised are:

- Noise and disturbance. The level of footfall and traffic movements would increase, especially at night.

The premises already has permission to operate as a restaurant and the ancillary A5 function operating until 22:00 hrs is not considered to be a use that would significantly increase the levels of noise and disturbance.

- A take-away function could operate past the terminating time of the A3 use.

Planning conditions can secure that the A5 use terminate at 22:00hrs.

- Residents feel that have been misled as the original planning application was for an A3 use but before the premises opened a take-away was being advertised and now that the Bengal Brasserie is open they are already operating an A5 function.

It is regrettable that the applicants are operating the A5 function without the benefit of planning permission, and if panel determine that the A5 function should be refused planning permission, the Council will have to consider taking enforcement action for the use to cease.

- Another take-away could be harmful to existing established businesses.
- There are already enough take-aways in the area

Competition in the market place is not a material planning consideration and can not be taken into account. Moreover it is not considered that if the A5 use is approved there would be an unacceptable proliferation of take-aways within the Town centre.

- Customers of the restaurant could use parking spaces allocated to residents of Victoria Court and Victoria Street.
- Vehicles belonging to staff of the Bengal Brasserie are parking without parking permits on Victoria Street.

The concern raised by residents, the Chinese take-away, Councillor Procter and Wetherby Town Council that the application would result highway problems due to increased parking demand and detriment to residential amenity have been covered within this report.

11.0 CONCLUSION

- 11.1 The proposed takeaway function to be included in the extant restaurant Function (A3) of the premises is not considered to be problematic in terms of the effect on the living conditions of nearby residents, the visual amenity and character of the Conservation Area nor is it considered that the takeaway function would introduce significant detriment in respect of highway matters. Therefore subject to conditions planning permission is recommended.

Background Papers:

Planning application file: 11/05186/FU

Certificate of Ownership: Attivo General Partner Ltd (Cert' B signed)

11/05186 №

The Angel
Public House

11/05186 №
Horsefair

Existing
Carpark

Existing
Building

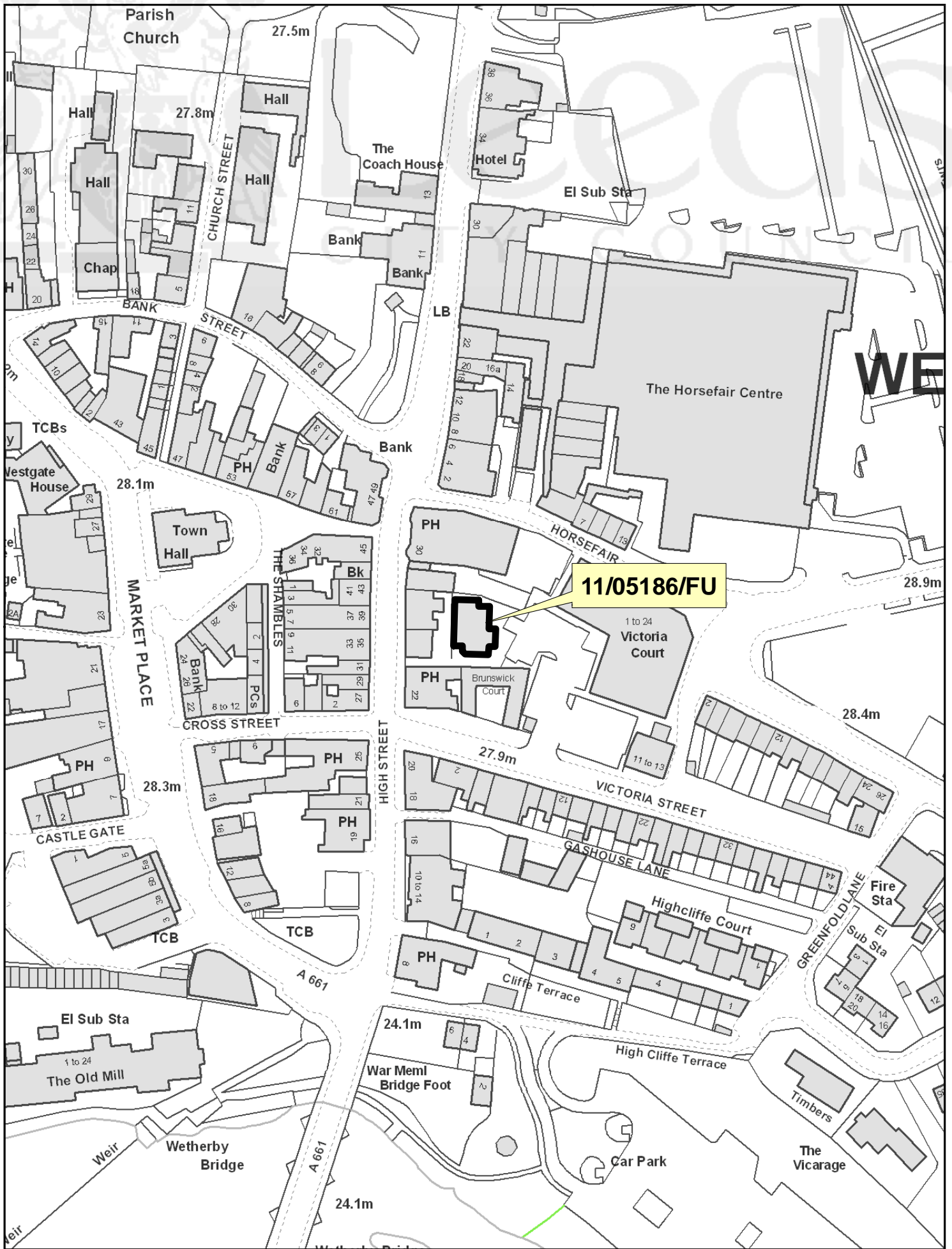
The Brunswick
Public House

Victoria Street

Existing Office
Building

PLANNING SERVICES
- 9 DEC 2011
DEVELOPMENT DEPARTMENT

High Street



EAST PLANS PANEL