

Change of use to a shop (Use Class E) and associated works

Report Item No
A3

Former Castle Donington Library, Delven Lane, Castle
Donington, Derby, DE74 2LJ

Application Reference
21/01615/FUL

Grid Reference (E) 444570
Grid Reference (N) 327159

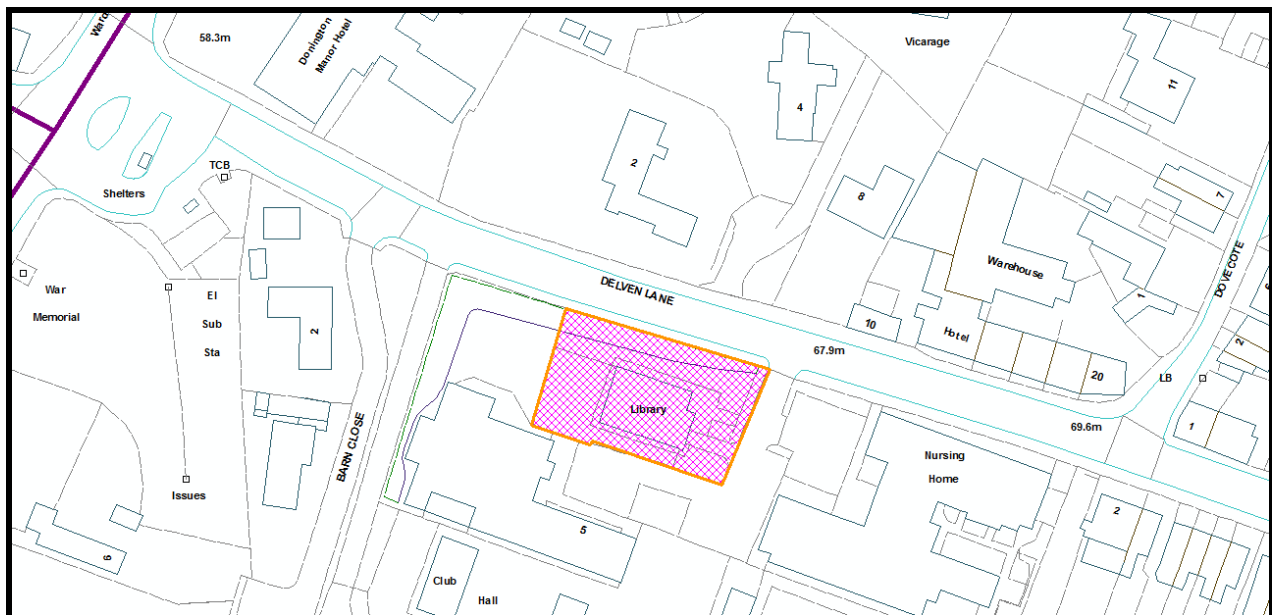
Date Registered:
13 October 2021
Consultation Expiry:
14 February 2022
8 Week Date:
8 December 2021
Extension of Time:
None Agreed

Applicant:
Liluben Odedra

Case Officer:
Jen Wallis

Recommendation:
PERMIT

Site Location - Plan for indicative purposes only



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The application is brought to Planning Committee at the request of Councillor Saffell due to the proposed retail use being outside the designated Village Centre and the allocation of Convenience Stores already up to the maximum allowed in Castle Donington, so this site is not required. Also due to concerns on visual impact and access for emergency vehicles.

RECOMMENDATION - PERMIT, subject to the following conditions:

- 1 - time period
- 2 - approved plans
- 3 - opening hours
- 4 - parking
- 5 - cycle parking
- 6 - delivery Management Scheme
- 7 - use class restriction
- 8 - delivery hours
- 9 - colour of box and roller shutters
- 10- Retention of existing trees on site

MAIN REPORT

1. Proposals and Background

Planning permission is sought for the retrospective change of use of the former Castle Donington Library (Use Class F1 - Learning and non-residential institutions of the Town and Country Planning (Use Classes) Order 1987 (as amended)) on the south side of Delven Lane in Castle Donington into a retail shop (Class E - Commercial, business and service). Immediately to the south lies the Dovecote Veterinary Hospital. This shares a vehicular access with the library off Delven Lane, as well as Castle Donington Care Home and Castle Donington Bowls Club.

The site is located within the Limits to Development of Castle Donington, as defined by the Policy Map to the adopted North West Leicestershire Local Plan and has been operating as a Spar store for approximately a year.

A separate application for advertisement consent for adverts that have been installed on the building, is also currently under consideration (Planning Application Ref: 21/02028/ADV).

Precise measurements of the proposal are available to view on the submitted plans.

Planning History

All previous planning history is related to its former use as a Public Library (Use Class F1) and not relevant to the current proposal.

21/02028/ADV Installation of various non-illuminated signage - Pending Consideration

2. Publicity

26 neighbours notified.

Press Notice published Derby Evening Telegraph 27 October 2021.

3. Summary of Consultations and Representations Received

Castle Donington Parish Council

Has raised concerns about the proposal relating to

- Applicant has knowingly been operating the store without the necessary consents
- Need - there is no need for an additional retail store in the locality
- Sequential Test - although one has been carried out there is still considered to be no need.
- Highways - insufficient parking, unsuitable access for delivery vehicles, high level of congestion, danger to pedestrians. A covenant restricts the number of parking spaces to 1 space.
- Loss of Trees - two trees were removed from the forecourt of this building unlawfully being in the conservation area - what enforcement action will the Council be taking?

North West Leicestershire DC Policy Team

Request a Sequential Test including a Walkover of the Town Centre to establish the availability or otherwise of suitable premises.

Leicestershire County Council Highway Authority

Consider that the impacts of the development on highway safety would not be unacceptable, and when considered cumulatively with other developments, the impacts on the road network would not be severe.

Appropriate conditions recommended.

North West Leicestershire District Council's Environmental Protection Team

No objections to make on the granting of this planning permission. The proposed use would not negatively impact on its environment by way of noise, light, odour or other disturbance.

Ward Member

Councillor Saffell, objects to the proposal on the grounds that the retail use is outside the designated Village Centre and allocation of Convenience Stores is already up to the specified maximum and as such, there is no need for this site. There should be no Roller Shutter Doors in the Conservation Area. Also concerned that this use in this location is not practical because the traffic generated particularly that of delivery lorries severely restricts access for emergency vehicles (Ambulances) to both The Nursing Home and the Vets Hospital

Third Party Representations

Four letters of neighbour representation have been received raising concern on the following grounds:

- The SPAR outlet already now displays considerably more advertising & signage than has been applied for (wall mounted banners, Pop up 'A-frame' boards and bright red cardboard barricades) - these are unstable, move around in high winds and look unsightly in the conservation area
- Two trees have been removed from the foreground of the building. These were relatively small specimens and were considered to be more ornamental. These two mature trees have been ripped out unlawfully and for the sole purpose of adding car parking space
- This Developer has ploughed on regardless of what appears to be a toothless Planning & Control process. Please can you provide some re-assurance that the planning and legal issues that arise from this behaviour are being addressed
- Access - Already busy with the driveway serving a Vets, Residential Care Home, and the Bowls Club. Traffic regularly queues from the traffic lights on the main road all the way up the hill past the Nursing Home on Delven Lane. Very large numbers of school children walk past to and from St Edward's Primary School and Castle Donington College. Since the shop has opened, parking at the entrance to the site has become heavily congested and dangerous
- Parking - inadequate parking provision for the shop and delivery vehicles often block Delven Lane and the access to the Vets and Nursing Home, park inconsiderately on the pavement as well as parking on our land - Parish Council is applying for double yellow lines on Delven Lane as a result.
- Impact on Conservation Area
- On the balance of a low level of need for the proposed convenience store and the

increased pedestrian and safety risks that this application presents it should be rejected.

A separate objection has been submitted by JLL on behalf of Dovecote Veterinary Hospital raising the following concerns:

- Transport and highway impacts of the development - the shop generates significant trip numbers/deliveries that the area is unable to accommodate. The unauthorised use of the library as a shop is exacerbating an already strained parking situation and leading to the unacceptable use of neighbouring occupiers car parking and turning areas
- Parking - very limited detail has been provided with concern to parking in the original proposal and the proposal may fall below the adopted parking standards.
- Access - no operational parking provided for deliveries and no scope on the site to accommodate it. As a result, the delivery vehicles block road traffic, and the capability to access the other occupiers. Specifically, the vehicles are blocking access to the veterinary hospital which deals with a wide range of emergencies. Additionally, not only do emergency patients need to access the site, but also vital deliveries of oxygen gas cylinders and other sensitive apparatus.
- Impact on the Castle Donington Conservation Area - the application has no regard for its proximity to the Conservation Area and appears to have no consideration for minimising impact on heritage - the advertisements are considered to be inappropriate to the area context and would have a detrimental impact on visual amenity.
- Loss of a Community Facility - Local Plan Policy IF2 states that the loss of such services will be resisted unless an appropriate alternative is provided, or there is demonstrable evidence that the facility is no longer required and/or viable and that suitable alternative community uses have been considered.

4. Relevant Planning Policy

National Planning Policy Framework (2021)

The following sections of the NPPF are considered relevant to the determination of this application:

- Section 2 - Achieving sustainable development
- Section 4 - Decision-making
- Section 7 - Ensuring the vitality of town centres
- Section 9 - Promoting sustainable transport
- Section 12 - Achieving well-designed places
- Section 14 - Conserving and enhancing the historic environment

Adopted North West Leicestershire Local Plan (2021)

The following policies of the adopted Local Plan are consistent with the policies in the NPPF and should be afforded weight in the determination of this application:

- S2 - Settlement Hierarchy
- D1 - Design of new development
- D2 - Amenity
- IF4 - Transport Infrastructure and new development
- IF7 - Parking provision and new development
- EC8 -Town Centres: Hierarchy and Management of Development
- EC9 - Town and Local centres: Thresholds for Impact Assessments

EN1 - Nature Conservation
EN6 - Land and Air Quality

Other Policies and Guidance

National Planning Practice Guidance.
Planning (Listed Buildings and Conservation Areas) Act 1990
Leicestershire Highway Design Guidance.
Good Design for North West Leicestershire SPD - April 2017.

5. Assessment

Principle of Development

The site is located within the defined Limits to Development for Castle Donington, a Key Service Centre. However, it is located outside of the defined Castle Donington Local Centre. The site is therefore considered to be an out of centre location for main town centre purposes.

National Policy

Paragraph 87 of the NPPF states that local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge-of-centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out-of-centres sites be considered.

Paragraph 88 of the NPPF states that when considering edge-of-centre and out-of-centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge-of-centre sites are fully explored.

The NPPF also provides a definition of an Edge of Centre Site: For retail purposes, this is a location that is well connected to, and up to 300 metres from, the primary shopping area.

The Planning Practice Guidance states that it is not necessary to demonstrate that a potential town centre or edge-of-centre site can precisely accommodate the scale and form of development being proposed, rather to consider what contribution more central sites are able to make individually to accommodate the proposal.

Planning Practice Guidance (Paragraph: 010 Reference ID: 2b-010-20190722, revised 22/7/19) specifically mentions that the suitability, accessibility, availability, and viability of locations should all be considered.

Planning Practice Guidance (Paragraph: 011 Reference ID: 2b-011-20190722, revised 22/7/19) requires that consideration be given to flexibility in the format and/or scale of the proposal.

Paragraph 90 of the NPPF also states that when assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default

threshold is 2,500m² of gross floorspace).

Local Plan

Policy EC8 'Town Centres: Hierarchy and Management of Development' of the Local Plan states that proposals for retail and other main town centre uses will be expected to be located within town and local centres. Development outside of the defined town and local centres will only be permitted if it can be demonstrated that a sequential approach has been followed which favours sites in a defined centre, then edge-of-centre and then out-of-centre. New retail and town centre uses should be of a scale appropriate to the role, function and character of the settlement and not undermine the balance of hierarchy.

Policy EC9: 'Town and Local centres: Thresholds for Impact Assessments' of the Local Plan indicates that an assessment will be needed for retail, leisure and office development that are over 500 sqm where they are outside Castle Donington's defined Local Centre.

North West Leicester Planning Policy Team has provided the following comments on the planning submission and how it addresses the above policies:

Policy EC9: Town and Local Centres: Thresholds for Impact Assessment of the local Plan identifies the threshold of 500 sqm gross for retail and leisure development outside of Castle Donington. This proposal falls below this threshold and as such an impact assessment is not required.

Sequential Test

The site is located approximately 60m from the edge of the defined Castle Donington Local Centre Boundary and therefore is considered an Edge of Centre site given that it is located within 300m from the town centre boundary (although it will be suggested that consideration also be given to the accessibility of the site). Given the edge-of-centre location of the proposal site, any application proposal must be supported by an assessment of sequentially preferable sites, firstly looking at sites within the town centre.

As a general summary, the submitted sequential test provides the following:

- *A walkover of the town centre (undertaken on behalf of the applicants although the date is unknown) has been carried out of Castle Donington and did not identify any vacant ground floor level premises although it notes that there may be units available at upper floor levels. However no physical advertisements were visible.*
- *Local agents and websites were then assessed to ascertain if any town centre premises were available for retail. (e.g. Right Move, Property Link, Zoopla, Prime Location, Boxpod and Move Hut). A property was found, but details of the actual address were not provided but it related to a takeaway which was being sold as an ongoing business including premises. The size of the unit is significantly smaller than the application building and this has been discounted as the sale relates to the premise and business and is a takeaway and not a retail unit. No other premises were found to be available for retail use within the town centre.*
- *No other premises were found to be available at ground floor level. It is acknowledged that some upper floors maybe available but a retail function requires a ground floor premises.*
- *The Assessment also suggest that the town centre is tightly drawn with limited development opportunities. Combining this with low vacancy rates and that there are quite a number of residential premises within the local centre, this limits the opportunities for finding premises within the defined centre.*

- *Therefore, as no premises exist within the town centre, the sequential approach moves onto edge of centre. Although the site is beyond the town centre boundary, it is adjacent to the boundary, being a matter of a few seconds walk from the site into the town centre designation. Therefore, the site occupies an edge of town centre site which is sequentially the next most preferable for commercial uses. The site therefore occupies a sustainable location, on the edge of the town centre which can be accessed just as easily using non-car modes of transport as sites within the town centre.*

The Council's Planning Policy Team has raised some concerns about the conclusions of the submitted Sequential Test. These are set out below:

A survey of premises was undertaken in June/July 2021 by Council officers and a number of vacant premises at ground floor level were observed. This is different to the results of the survey undertaken on behalf of the applicants although the date of their survey is unknown. However, it is appreciated that this information is only correct at a point in time and circumstances will change. It is therefore suggested that it be advisable for the case officer to undertake a walkover of the local centre themselves, so that they have an up to date picture regards vacant properties. A search, using local agents, identified no premises as being available within the Castle Donington Local Centre.

However, it is also suggested that consideration is also given to the sustainability of the site and its relationship/linkages with the defined local centre. There is no direct pedestrian access from the site to the defined local centre, walking routes to get to the local centre would most likely follow Dovecote/Apiary Gate or Delven Lane/High Street. Therefore, there is conflict with the advice in the PPG regarding accessibility of edge of centre sites to the town centre concerned. This may impact on use of non-car modes when accessing the site from the local centre and consideration will need to be given to whether it is unlikely that people using the town centre would then walk to this shop.

A further survey of premises was then undertaken in July 2022 by Council Officers and a number of vacant premises at ground floor level were observed. These included the following premises:

- 28 Borough Street - this appeared to be empty at the time of the survey but is a very small unit and therefore unsuitable for the use.
- 7 Market Street (Former Vape Vibes) - this appeared to be empty at the time of the survey but is a very small unit and therefore unsuitable for the use.
- Former HSBC Bank, 13 Market Street - this appeared to be empty at the time of the survey and is of a more significant size with a ground floor measuring around 90sq.m. plus some small narrower rear additions, totalling around 65 sq.m.

Therefore, as the existing shop premises measures 190sq.m, none of the above vacant units would fully meet the current requirements, although the former HSBC Bank is the closest to this if some flexibility (i.e. reduction in products sold/internal layout etc) in the shop format is made. Whilst this store is closest in size, it would be 35 sq.m smaller than the SPAR premises and would not meet their current retail requirements and under national retail policy requirements, the HSBC building has to be dismissed as a potentially preferable sequential site

Turning to the issue of sustainability and location of the proposed store, the main entrance is located some 60 meters from the boundary of the Local Centre Boundary, identified in the Castle Donington Inset in the adopted Local Plan, and close to the main town bus stops at the junction of Delven Lane and High Street. Whilst, NWLDC's Planning Policy Team have raised

concerns about connectivity, the core of the town centre (the start of Borough Street) is only 300m away and there is a choice of routes via either Delven Lane /High St or via Dovecote/Apiary Gate to get there on foot. Both routes have footpaths on either side of the routes for their whole length. Therefore, the site is accessible to the town centre for residents to make linked trips.

Conversely, the floorspace of the building - 190 sq.m (Gross)/ 136 sq.m total net sales floorspace is somewhat small and the store performs more of a local shopping function (e.g. where people stop to and from their way home to collect basic items), rather than a town/village centre function. Indeed, there appears to be a large footfall of pedestrian traffic along Delven Way to and from the nearby schools, who may use this facility when travelling to and from these schools. In addition, Delven Way serves two quite large housing estate, Hallam Fields/Stonehill and Eastway/Moira Drive, and this road forms the main access to them. People travelling by bus and alighting at the Delven Lane/High Street bus stops will also walk along Delven Way and past the store on their way to and from home. This store provides a local function serving the area immediately surrounding it and is not a store or facility which would attract visitors from further afield or detract from town centre uses.

An objection has been raised by the Ward Councillor that the capacity for retail in Castle Donington would be exceeded by the proposed store. There have been two retail capacity reports commissioned by the Local Authority, in 2019 and an update report in 2020. In the 2019 report no convenience goods development was identified for Castle Donington. However, the update report in 2020, which took into account revised population forecasts and expenditure forecasts, found that there was some requirement for additional convenience space in Castle Donington. The requirement set out in the report is as follows:

- By 2021 356sqm gross
- By 2026 441sqm gross
- By 2031 511 sqm gross
- By 2036 578 sqm gross

This report states that by 2021 there is a need for 356sqm floor area of convenience space in Castle Donington. As this proposed store has a gross floor area of 190sqm it contributes towards the identified convenience retail need in Castle Donington as identified in the 2020 Retail Capacity Report

As the site is outside of the defined centre it is subject to the sequential test, which as outlined above, the sequential test has been satisfied and there are no alternative/suitable units for a store of this size within the town centre. Therefore, it has been identified that there is a need for this size of convenience store within Castle Donington and there are no suitable units within the town centre.

Although this proposal does not fully comply with guidance in Policy EC9, the store unit of 190 sq.m is well below the threshold for an Impact Assessment on Castle Donington Town Centre and due to its size, performs more of a function of a local shop rather than a retail unit that will be in direct competition with the town centre retail functions. Therefore, on balance, for the reasons set out above the continuation of the use of this building as a retail store is considered to be acceptable.

In addition, the proposal will result in the loss of a Community Facility Local Plan. Policy IF2 relates to community and cultural facilities and states that the loss of such services will be resisted unless an appropriate alternative is provided, or there is demonstrable evidence that

the facility is no longer required and/or viable and that suitable alternative community uses have been considered. In this instance, the library was closed by its former owner Leicestershire County Council who provides the statutory library service for the County and the site sold and an alternative library facility was provided on Bondgate. On this basis the proposal is considered to comply with Policy IF2 as an appropriate alternative was provided to serve the area

As such, when balancing the issues set out above, the principle of development is considered to be acceptable in relation to Policy EC8, subject to all other planning matters being addressed.

Design and Appearance

The existing building comprises the former Castle Donington library building, which is located on the south side of Delven Lane.

The site lies within part of the Castle Donington Conservation Area, although the building itself being of a 1960s flat roofed utilitarian design, does not make a positive contribution to the character or appearance of the conservation area. It is the setting around the building, which is characterised by grass with semi-mature cherry trees or similar that make the more positive contribution to the areas character and setting.

No changes to the existing building design will result from this proposal, apart from the installation of new adverts to the fascia of the building on the elevation facing Delven Lane and the elevation facing the access road that runs in front of the main entrance to the building and these are the subject of a separate advertisement consent application which is also currently being considered. The only changes are the creation of a widened block paved parking area in front of the building entrance, which was created following the removal of two cherry trees on the building frontage.

The building is located within part of Castle Donington Conservation Area. The proposed development must therefore be considered against section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires that the council has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

The previous adverts and overall design of the library was more restrained in nature, following a 'Leicestershire County Council' corporate theme, demonstrated by the use of green painted fascias around the top of the building and predominantly white/green coloured signage. The fascia has now been painted white and the fascia signs installed mainly to the upper fascia of the building on part of the elevation facing Delven Lane and the elevation facing the access road that runs in front of the main entrance to the building. The changes made reflect the Spar corporate branding and other than the advertisements that have been installed on the premises, (which are subject to a separate advertisement consent application where their impact are considered separately) little has changed to its exterior.

The main exterior change (other than the advertisements referred to above) involves the introduction of an enlarged block paved parking area, in front of the building entrance. The removal of the two trees to create these spaces was unfortunate, and their loss has opened up views of the frontage of the former library building. However, this building and the car parking spaces will still be partially screened and framed by the remaining trees that surround the site and are therefore not visually prominent when viewed from public areas, particularly from Delven Lane. The block paved parking spaces also match the design of other similar parking areas that have been created in front of the residential home opposite and the Dovecote

Veterinary Hospital further along the access road.

Above the main entrance is a boxed roller shutter. Whilst a roller shutter is not visually attractive it would not be highly prominent on this building due to its siting which is screened from the public highway by landscape features and would not be out of character on this relatively modern addition in the Conservation Area. The building itself is a flat roof former county library and it does not contribute positively to the character and appearance of the Conservation Area and it is not similar in terms of its design or impact to any buildings within the old part of the Conservation Area. Therefore, the roller shutter is not considered to be harmful in this location to the Conservation Area and a condition can be imposed to ensure that the roller shutters and boxing are painted green, to tie into the colour scheme of the existing building to minimise the impact of the roller shutters even more

The proposal has been discussed with the Conservation Officer who has raised no objection to the proposal.

Overall, it is considered that the proposal would result in a neutral impact on the character and appearance of the conservation area, given the presence of the surrounding trees, thus maintaining the character of the conservation area.

Taking the above into account, it considered that the scheme is appropriate and would comply with the NPPF, Policies D1 and HE1 of the adopted Local Plan and the Planning (Listed Buildings and Conservation Area) Act 1990.

Impact upon Residential Amenity

Environmental Protection has raised no objections to the granting of this planning permission. The proposed use would not negatively impact on its environment by way of noise, light, odour or other disturbance.

However, to prevent possible problems early in the morning or late into the evening, given the proximity to residential properties, a condition to restrict the hours of opening from 07:00 to 22:00 daily is suggested. The hours of delivery can also be controlled and restricted via means of a condition.

Therefore, in respect of amenity the proposed scheme is considered to be acceptable in relation to Policies D2 of the adopted Local Plan.

Highway Considerations

The concerns of local residents and the Parish Council relating to highway safety and parking problems in the locality is recognised.

The Highways Team at Leicestershire County Council were consulted on this scheme, and they haven't raised any objections to it. However, as specific concerns were raised by the Parish Council and local residents, the case officer decided to reconsult with Highways to discuss their thoughts on these specific concerns which included the safety of the access, general highway safety generated by the development in the surrounding area and the impact of the use on the surrounding businesses who share the internal access road into the site. The Highway Authority have considered the above concerns and are satisfied that the impacts of the development on highway safety would not be unacceptable, and when considered cumulatively with other

developments, the impacts on the road network would not be severe.

The above highway assessment indicates that the proposal is considered to be acceptable on highway safety and parking grounds and they continue to be supportive of this scheme.

To try to address issues relating to deliveries, a condition requiring a Delivery Management Scheme to be drawn up and submitted to the Council for approval is suggested. This will ensure that deliveries are timed to avoid busy times and that smaller delivery vehicles are used where possible.

To encourage more sustainable means of transport to the shop, a condition will be applied requiring that 2 no. cycle hoops are provided on the shop forecourt.

Matters in relation to vehicles badly parked and not allowing access for other users of other premises who share the access road are not matters that can be considered or controlled under planning legislation.

Therefore, in respect of highway safety the proposed scheme is considered to be acceptable in relation to Policies IF4 and IF7 of the adopted Local Plan.

Comments on Consultation Responses

Objectors have made reference to the presence of a covenant preventing no more than 1 parking space being provided at the former library building, and request that this is now enforced.

Covenants are applied under Land and Property Law and need to be enforced by the owner of the Covenant should they decide to do so and the Council has no powers in its enforcement. This is a totally separate piece of legislation that is outside planning law and is not a material planning consideration that would carry any weight in this, or any other decision made by the Council on Planning matters

It is regrettable that the two trees on the frontage were removed to create the enlarged parking area, and the use of the shop commenced before planning permission was granted. The planning recommendation is based solely on a consideration of policies in the development plan plus any relevant material planning conditions and is not influenced by previous events. In response to a comment made by an objector, whilst the applicant removed the trees without firstly seeking consent from the Council, their loss is considered as part of this scheme and should planning permission be granted, it would not be appropriate to seek to prosecute the applicant for their removal.

The Ward Councillor has also commented that he has spotted that the most recent site plan submitted by the applicant is missing a further tree which already exists on site and he has questioned if this means that the tree is to be removed, and if it was this would not be acceptable as it would cause harm to the visual appearance of the surrounding area which is designated as a Conservation Area. The case officer has subsequently checked this point with the applicant who has confirmed that this was an error in the plans, and a new site plan has been submitted showing the tree as being retained on site. It is further considered that due to the fact that two trees have already been removed on site, that a condition is imposed to retain the other existing trees on site in the interest of the visual amenity of the area. Should the applicant wish to remove any tree in the future, he would have to apply to the Council for planning permission to do so and as such there would be control over any loss.

Conclusion

The principle of the development is acceptable. The proposal is not considered to have any significant detrimental design, residential amenity, heritage assets or highway impacts. There are no other relevant material planning considerations that indicate planning permission should not be granted. The proposal is deemed to comply with the relevant policies in the adopted Local Plan, the Design SPD and the advice in the NPPF and other national planning policy. It is therefore recommended that the application be permitted.