

<b>DATE WRITTEN</b>	28th March 2022
<b>REPORT AUTHOR</b>	Judith Jones
<b>CASE OFFICER</b>	Caroline Pulley
<b>COMMITTEE</b>	Planning and Regulatory
<b>COMMITTEE DATE</b>	6th April 2022

**Application No.**  
P/21/0244

**Date**  
18th August 2021

**Determining Authority**  
MTCBC

**Proposed Development**

**Location**

**Name & Address of Applicant/Agent**

Change of use of existing retail unit to A3 restaurant

3 Chestnut Way  
Gurnos  
Merthyr Tydfil  
CF47 9SB

Mrs Minakshi Gupta  
c/o Mr J Payne  
Cwmffynnon Cottage  
Twyn College  
Newbridge  
NP11 3NR



**PURPOSE OF REPORT**

**To further consider planning application P/21/0244**

At the Planning, Regulatory and Licensing Committee meeting held on the 9<sup>th</sup> February 2022 it was resolved to defer the determination of the application to undertake a fact finding site visit. This took place on the 25<sup>th</sup> March 2022.

The main issues raised during the fact-finding site visit centred on the impact of the proposed restaurant use on the availability for parking in the area. It was highlighted that the car park was busy during the day and on-street parking was likely to cause highway hazards in the area. Also, the other car park in the area is in private ownership. Officers highlighted that there is a communal car park to the front of the site and the premise could operate as a hairdressers without permission, which could also increase demand for long-term parking. The case officer highlighted that the application site is also located in a sustainable location and future customers may live locally and choose to walk to the premise instead of travelling by car.

Members requested confirmation of the opening hours for the adjoining takeaway premise 'Charcoal Grill'. It is understood that 'Charcoal Grill' opens to around 11pm, which would be similar to that of the proposed development. Members noted that the premise has been vacant for two years and it would be desirable if the property could be brought back into beneficial use, especially as many other local centres in the County Borough have suffered decline through increased pressure from online retailing.

All the issues raised during the meeting have been fully considered in the original committee report and the conclusions reached were simply re-iterated at the site visit. The points raised at the fact-finding site visit did not highlight any new issues that would alter the original recommendation to Committee.

### **COMMITTEE'S DECISION IS REQUIRED.**

A copy of the original report to Committee is reproduced below for committee's convenience.

Councillor Jeremy Davies has requested this application be reported to committee in order to consider the parking concerns raised by local residents.

### **APPLICATION SITE**

The application site relates to a vacant retail unit situated within the local retail centre of the Gurnos. The premise is bound by a pharmacy to the left and a takeaway to the right. There is a small communal service yard to the rear of the building and a communal car park to the front, which provides 24 car parking spaces. The wider area is predominantly residential in nature with neighbouring properties being located to the south and north-east of the site.

### **PROPOSED DEVELOPMENT**

This application seeks planning permission to change the use of a shop to a restaurant falling within use class A3 of the Town and Country Planning (Use Classes) Order 1987. To facilitate the change of use, the shop floor, which is located to the front half of the premise, would be subdivided to provide a seating area (with a seating capacity for 10 people) and a food preparation area. The two storage rooms located to the rear of the premise would remain unchanged. The restaurant would operate seven days a week between the hours of 10am and 11pm and would employ four full time staff and four part time staff.

The submitted plans indicate that the proposed use would involve the installation of a 0.7m high, 0.3m wide extraction flue. The flue would largely be installed internally within the

building, travelling up from the food preparation area and exiting the building through the northern side roof plane.

## PLANNING HISTORY

The most recent history relating to the property is as follows:

P/12/0349                      Retention of adverts on ATM within front elevation of shop  
APPROVED – 28.01.2013

P/12/0348                      Retention of ATM within front elevation of shop  
APPROVED – 28.01.2013

## CONSULTATION

Head of Engineering:                      No objection.

Environmental Health Manager:                      No objection, subject to a condition requiring specification details for the proposed extraction system to be provided.

Welsh Water:                      No objection, subject to conditions relating to the disposal of surface water and provision of a grease trap.

## PUBLICITY

In accordance with the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, letters were sent to the adjoining properties and two site notices were displayed within the vicinity of the site.

As a result of the publicity exercise carried out, one letter of objection has been received from the owner of one of the adjoining commercial premises, Charcoal Grill, 1 Chestnut Way. In this letter, concern is raised that the change of use of the premise would have an impact on parking and a negative financial impact on the neighbouring business.

A petition with 124 signatures has also been received. The petition is based on the following planning matters:-

- Impact of the use on parking;
- Odour and litter;
- Vermin (rats); and
- Unsociable behaviour and unsociable hours;

## POLICY CONTEXT

### National Policy

The Future Wales – the National Plan 2040 sets out a strategy for addressing key national priorities through the planning system, including sustaining and developing a vibrant

economy, achieving decarbonisation and climate-resilience, developing strong ecosystems and improving the health and well-being of our communities.

Planning Policy Wales (PPW) Edition 11 (February 2021) sets out the land use policies of the Welsh Government. The most relevant sections are:

Paragraphs 3.3 – 3.16 sets out the principles of good design in new development proposals, which should take into account its relationship to its surrounding context.

Paragraphs 4.3.30, 4.3.31 and 4.3.32 refer to mixed uses in centres and explains that *'...although retailing (A1) uses should underpin retail and commercial centres, it is only one of the factors which contribute towards their vibrancy....Primary areas are typically characterised by a high proportion of A1 retail uses...Secondary areas typically contain mixed uses, for example shops, cafes and restaurants, financial establishments and other services and community facilities...Policies should encourage a diversity of uses in centres...'*

Paragraph 4.3.33 talks about the vibrancy and viability of centres and states that these *'...are distinguished by a diversity of activity and uses which should contribute towards a centre's well-being and success, whilst also reducing the need to travel...'*

The policies in PPW are supported by Technical Advice Notes (TANs). The most relevant TANs to this application are as follows:-

Technical Advice Note (TAN) 4: Retail and Commercial Development (November, 2016)

Section 2.3 of TAN 4 refers to the variety of uses in the centre and states that *'...a wide range of uses are located in retail and commercial centres including retail, office, residential, leisure, tourism and community functions. These centres are traditionally characterised by having higher densities which increases scope for different uses, including residential, to be accommodated above retail and commercial floorspace. Encouraging people to live and work in existing centres reinforces local demand and provides additional vibrancy during the day and in the evening. This diversity of uses, whilst benefiting the wider economy, will need to be carefully planned and managed to ensure that no conflicts arise, particularly with regards to amenity...'*

Technical Advice Note (TAN) 12 - Design (March, 2016) advises that the Assembly Government is strongly committed to achieving the delivery of good design in the built and natural environment, which is fit for purpose and delivers environmental sustainability, economic development, and social inclusion at every scale throughout Wales.

### Local Policy

Merthyr Tydfil County Borough Council Replacement Local Development Plan (LDP) 2016-2031:

Policy SW4 – Settlement boundaries

Policy SW11 – Sustainable Design and Placemaking

Policy EnW4 – Environmental Protection

Policy EcW3 – Retail Hierarchy – Supporting Retailing Provision

## Policy EcW5 – Town and Local Centre Development

### PLANNING CONSIDERATIONS

The issues to consider under the assessment of this application relate to whether the proposed change of use, from an A1 use to an A3 use, would be acceptable in this location. The acceptability of the proposal with regard to its impact upon the character and appearance of the property, residential amenity, ecology, parking provision and highway safety are also primary considerations.

#### Principle of Development

The premises lies within the settlement boundary. Policy SW4 states that development in this location is considered acceptable in principle, provided it is compatible with other relevant LDP policies and material planning considerations. The proposal would therefore comply with Policy SW4.

The premises also lies within the Gurnos Local Centre, and therefore Policies EcW3 and EcW5 are relevant. Policy EcW3 relates to retail hierarchy, with the town centre being the favoured location for retail and other complementary uses followed by local centres, provided they improve the vitality and viability of the centre. The proposal would represent a loss in A1 floorspace. However, within local centres a change of use from A1 to another A use class is acceptable in principle, subject to it enhancing the viability of the centre. In this instance, the proposal would enhance the vitality and viability of the centre since the restaurant would be occupying a premises, which has remained vacant for approximately 2 years. Also, the premise would be open during normal (day time) trading hours and no changes are proposed to its shop frontage. As such, the proposed use is not considered to have a negative impact on the vitality and viability of the Gurnos local centre. The proposal would therefore comply with LDP Policies EcW3 and EcW5.

#### Character and Appearance

The proposed change of use would not result in any external alterations to the building other than the addition of a flue. This alteration has been amended since it was originally submitted and is now shown to be installed internally. As such, the proposed flue would not be visible within the wider area, other than its 0.7m metre projection above the roof line (which would be similar to the height of chimney). As such, this part of the proposal would not significantly harm the appearance of the premises, nor would it adversely affect the character of the street scene. It would therefore comply with Policy SW11.

#### Residential amenity

While acknowledging the concerns raised by local residents in relation to odour, unsociable hours and unsociable behaviour, the premises is sited within a local retail centre and does not directly adjoin any residential properties. The premise adjoins two other premises, a pharmacy to the north and a takeaway to the south. It is appreciated that the proposed restaurant use, could generate disturbances as a result of the comings and goings of customers, particularly since it is proposed to operate into the evening. Nevertheless, the operation of a restaurant until 11pm within an established local centre is considered acceptable, given that there are a variety of uses, including a takeaway use which has very

similar opening hours in the evening. As such, the proposal would not significantly add to the levels of noise and activity that already exist. Consequently, the proposal would not harm residential amenity to an extent that would warrant the refusal of the proposal or necessitate a condition limiting opening hours. It should also be noted that should the applicant wish to open the premise after 23:00 hours this would be a matter controlled by the licensing department.

In addition to noise and disturbance, it is also noted that certain uses within the A3 Use Class would generate odours and cooking smells which can be detrimental to the living conditions of surrounding residents. This can often be alleviated via a suitably designed extraction system and this proposal includes a flue, which exits the building through the roof. The Council's Environmental Health Manager has reviewed the details and has not raised an objection to the scheme but has recommended a condition requiring specification details for the extraction system to be submitted and approved prior to the commencement of the proposed restaurant use.

Taking into account the above, the proposed change of use would not detract from the privacy or amenities of nearby residential occupiers and would therefore comply with Policies SW11 and EnW4 of the LDP.

#### Parking and Highway Safety

Whilst appreciating that the restaurant use could lead to increased demand for long-term parking in the locality, off-street parking is available within the communal car park to the front of the site. It should be noted that the premise can operate as an A1 use without permission. Such permitted uses could also increase demand for long-term parking that could be similar to the proposed use. The application site is also located in a sustainable location where many day-to-day facilities can be accessed on foot, by bicycle or by using public transport. Furthermore, the residential nature of the area means that it is reasonable to expect that many potential customers may live locally and would walk to the premises. Most importantly, the Head of Engineering has not raised an objection to the proposed development. On the basis of the above, it is not considered that the development would have a detrimental impact on highway safety and is compliant with the requirements of Policy SW11 of the LDP.

#### Ecology

In respect of ecology, the Council's Ecologist has concluded that survey work would not be required in respect of this proposal. However, in accordance with the Environment (Wales) Act (2016), the installation of a bat box has been requested. In this instance, given that the development relates to only minor external alterations, it would not be reasonable to impose a condition to require the installation of a bat box.

#### Other matters

The concerns raised to the application by a local business owner have been acknowledged. However, the financial implications resulting from competition of similar uses in an area is not a matter which can be considered under planning legislation.

There are concerns from local residents that the proposed use could attract vermin (i.e. rats) and result in increased litter in the area. While these concerns are acknowledged, they are not considered reasons to warrant the refusal of planning permission and can indeed be controlled by other legislation.

### Conclusion

The proposed development is acceptable in this location and would not adversely impact upon the character or appearance of the premises, nor would it be deemed detrimental to residential amenity, ecology or highway safety. It is considered that the proposal would help support the vitality and viability of the Gurnos local centre by enabling the re-use of a vacant building in a small retail area. The development would not result in unacceptable noise and disturbance to the occupiers of residential properties in the area and the Head of Engineering has not raised any highway safety concerns. Subject to the recommended conditions, the proposal is acceptable and would accord with Policies EcW3, EcW5 and SW11 of the LDP.

The duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (“the WBFG Act”) has been taken into consideration when determining this application. In reaching the following recommendation, the ways of working set out at section 5 of the WBFG Act have been considered and thus the proposal is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WBFG Act.

Accordingly the following recommendation is made:

### **RECOMMENDATION: BE APPROVED subject to the following CONDITIONS**

1. The development shall begin not later than five years from the date of this decision.

**Reason** - To comply with Section 91 of the Town and Country Planning Act 1990.

2. The development shall be carried out in accordance with the following approved plans and documents:

Drawing number 001 Rev B received on 11.11.2021

Drawing number 002 Rev A received on 11.11.2021

Drawing number 003 Rev A received on 11.11.2021

**Reason** -To ensure compliance with the approved plans and clearly define the scope of the permission.

3. Before the use commences, details of a system to prevent waste cooking oil, fats and grease and solid waste from entering the foul drainage system shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the use of the premises commences and then shall operate in perpetuity.

**Reason** - To protect the integrity of the public sewage system and ensure the free flow of sewage.

4. Before the use commences, a scheme of odour/effluvia/fume control shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented before the use commences and the use shall thereafter only be operated in accordance with the approved scheme.

**Reason** - To protect the amenities of the occupiers of adjoining properties in accordance with Policies SW11 and ENW4 of the Merthyr Tydfil Local County Borough Council Replacement Development Plan.

5. No surface water and/or land drainage shall be allowed to connect directly or indirectly with the public sewerage network.

**Reason** - To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.

## **INFORMATIVES**

1. This planning permission does not provide consent to undertake works that require a European Protected Species (EPS) licence.  
All bats and their roosts are protected under UK and European legislation. It is an offence to deliberately kill, injure, capture or disturb a bat or to recklessly damage or destroy their breeding sites or resting places.

If works are planned on a building/tree in which bats are found to be roosting, Natural Resources Wales (NRW) must be contacted. on 0300 065 3000 or at <https://naturalresources.wales/permits-and-permissions/species-licensing/apply-for-a-protected-species-licence/bat-licences/?lang=en>.

If work has already commenced and bats are found, or if any evidence that bats are using the site as a roost is found, work should cease and NRW should be contacted immediately.

Under these circumstances, an EPS licence is likely to be required to undertake the works within the law.

2. The applicant/developer should be aware that the choice of extraction system must satisfy the requirements of the Health and Safety at Work etc Act 1974 and the specific regulations made thereafter, being the Workplace (Health and Safety Welfare) Regulations 1992 and the Gas Safety (Installation and Use) Regulations 1998.

The applicant/developer must ensure their choice of extraction system must be able to provide the same level of performance as specified in the DW/172 Specification for Kitchen Ventilation Systems, which sets the benchmark for safe and effective ventilation in commercial kitchens.

The applicant must consult a suitably qualified person (i.e. commercial heating and ventilation specialist/commercial catering engineer) to ensure that the choice of extraction system meets the above mentioned standard.

3. The developer is advised to fully review the response received from Welsh Water during the application process. The proposed development is crossed by a public sewer and no operational development shall be carried out within 3m of the centreline of this asset. The applicant may also need to apply to Welsh Water for any connection to the sewer under Section 106 of the Water Industry Act 1991.

The planning permission hereby granted does not extend any rights to carry out any works to the public sewerage or water supply system without first having obtained the necessary permissions from Welsh Water.

4. The Developer is advised to check and confirm the positions of all boundaries **BEFORE** construction works commence.

Any discrepancies or problems of interpretation of boundary lines shall be resolved amongst all interested parties **BEFORE** works commence.

Failure to comply with this information could lead to civil action being brought against the developer by aggrieved parties.