

**WELWYN HATFIELD BOROUGH COUNCIL
EXECUTIVE DIRECTOR - PLANNING, PUBLIC PROTECTION AND GOVERNANCE**

DELEGATED APPLICATION

Application No: 6/2019/2885/FULL
Location: 40 Wigmores North Welwyn Garden City AL8 6PH
Proposal: Change of use from A1 (shop) to Sui-Generis (nail bar/beauty salon)
Officer: Ms Emily Stainer

Recommendation: Granted

6/2019/2885/FULL

| Context | |
|--|---|
| Site and Application description | <p>The application site comprises a ground floor unit which is located on the western side of the highway. The existing use is a shop (A1) which was last used as a men's clothing store, however the unit is currently vacant. The site lies within the Welwyn Garden City Town Centre, the Welwyn Garden City Conservation area, Primary Retail Core and Retail Frontage as designated in the Welwyn Hatfield District Plan 2005.</p> <p>This application proposes to change the use from A1 (shop) to a sui-generis use (nail bar/beauty salon).</p> |
| Constraints (as defined within WHDP 2005) | <p>CA - Conservation Area: WGC1; - Distance: 0 PRC - Primary Retail Core (Primary Retail Core) - Distance: 0 Town - Welwyn Garden City Town Centre - Distance: 0 Wards - Handside - Distance: 0 FM10 - Flood Zone Surface Water 100mm (2711305) - Distance: 0 FM00 - Flood Zone Surface Water 1000mm (7566684) - Distance: 0 MIX - Mixed Use Frontages - Distance: 0 HEN - No known habitats present (medium priority for habitat creation) - Distance: 0 SAGB - Sand and Gravel Belt - Distance: 0</p> |
| Relevant planning history | <p>Application Number: C6/1983/0755/ Decision: Granted Decision Date: 11 January 1984 Proposal: New shop front</p> <p>Application Number: N6/1995/0817/FP Decision: Granted Decision Date: 30 January 1996 Proposal: Alterations to existing shop front</p> |
| Consultations | |

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|--|---|-----------|----------|
| Neighbour representations | Support: 1 | Object: 0 | Other: 0 |
| Publicity | Site Notice Display Date: 22 November 2019 Site Notice Expiry Date: 13 December 2019 Press Advert Display Date: 4 December 2019 Press Advert Expiry Date: 18 December 2019 | | |
| Summary of neighbour responses | <p><u>50 Church Road –</u></p> <ul style="list-style-type: none"> The pre-application advice shows that 27% of the frontage would remain in A1 usage. Whilst this would be contrary to Policy TCR8 it has to be accepted that the breach of the 50% requirement for A1 usage has been in place for a considerable period of time as there has been no change in the occupants of the units for many years. The emerging plan Policy SADM4 designates this part of Wigmores North as a secondary trading position where the percentage of A1 usage can fall to 30%. Whilst this application would reduce this to 27% this is a minimal amount below the threshold. However, SADM4 also allows a reduction to below 30% where it can be demonstrated that active and extensive marketing has been undertaken over a period in excess of 12 months and that it can be shown that there is a lack of demand for A1 retail. It is clear from the marketing report produced by Brazier Freeth that an extensive marketing exercise has been undertaken and there has been a distinct lack of demand for any type of use for 40 Wigmores due to its secondary positioning and resultant low footfall. Whilst a nail bar is classified as being “sui generis” from a planning classification it should be borne in mind that it is seen as being of a town centre use, rather like the gym above, and will enhance the Wigmores area. The loss therefore of a small A1 unit in a secondary position in Wigmores will not have any detrimental impact on the town centre from a retail perspective. It has been shown in the documents supporting the planning application that a nail bar is a town centre use and that even with extensive marketing being undertaken that an A1 occupier cannot be found. As such, and with other precedents already set the application for change of use on 40 Wigmores should be approved without delay. | | |
| Consultees and responses | <p><u>WHBC Public Health and Protection</u> - Due to the type of activities expected to take place as part of this change of use application, noise is not seen to be a significant concern. To ensure confidence that an impact on neighbour amenity will not occur, it is recommended that an odour control condition is placed on the application.</p> <p><u>HCC Transport Programmes and Strategy</u> - There are no proposed alterations to the existing vehicular or pedestrian access. The proposals in terms of transport and highway impact would be considered to have no impact than the present A1 use. The traffic generation, if any, from the development would not alter significantly considering the location and sustainability of the site; furthermore, it would not have a detrimental impact on highway safety.</p> | | |
| Relevant Policies | | | |
| <input checked="" type="checkbox"/> NPPF <input checked="" type="checkbox"/> D1 <input checked="" type="checkbox"/> D2 <input type="checkbox"/> GBSP1 <input checked="" type="checkbox"/> GBSP2 <input checked="" type="checkbox"/> M14 <input checked="" type="checkbox"/> Supplementary Design Guidance <input checked="" type="checkbox"/> Supplementary Parking Guidance <input checked="" type="checkbox"/> Interim Policy for car parking and garage sizes | | | |

Others:

SD1 Sustainable Development
TCR8 Mixed Use Frontages
R19 Noise and Vibration Pollution

Draft Local Plan Proposed Submission August 2016:

SP1 Delivering Sustainable Development
SP4 Travel and Transport
SP5 Quantity and Location of Retail Development
SP9 Place Making and High Quality Design
SP16 Welwyn Garden City Town Centre Strategy
SADM 2 Highway Network and Safety
SADM 4 Development in Designated Centres
SADM 11 Amenity and Layout
SADM 12 Parking, Servicing and Refuse
SADM 18 Environmental Pollution

Main Issues

Is the development within a Conservation Area?

Yes No

The development is located within the Conservation Area: WGC1.

Would the significance of the designated heritage asset be preserved or enhanced?

Yes No

Comment (if applicable):

The site is located within Welwyn Garden City Conservation Area. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires Local Authorities to have regard to the desirability of preserving or enhancing the character and appearance of the Conservation Area.

Section 185 of the NPPF states plans should set out a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. This strategy should take into account:

- a) the desirability of sustaining and enhancing the significance of heritage assets, and putting them to viable uses consistent with their conservation;
- b) the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;
- c) the desirability of new development making a positive contribution to local character and distinctiveness; and
- d) Opportunities to draw on the contribution made by the historic environment to the character of a place.

Section 196 of the NPPF state where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

As no alterations are proposed to the external appearance of the building, the change of use of the building will not, in itself, impact upon the character and appearance of the Conservation Area. Should external alterations be required in future this may require planning permission and this information should be provided as part of an application for planning permission. Any signage may also require separate Advertisement Consent.

The principle of the change of use

The application site is located within the Core Retail Zone within Welwyn Garden City. New development or changes of use within designated centres are supported subject to them not having a detrimental impact on the vitality and viability of the town centre.

Sustainable development

The site is situated in a particularly sustainable location, being within walking distance of the town centre and the train station and being served by various bus services. The principle of the development is therefore considered to be in accordance with the National Planning Policy Framework 2019, Policy SD1 of the District Plan 2005 and Policy SP1 of the Draft Local Plan Proposed Submission August 2016.

Change of use

Loss of retail use

The National Planning Policy Framework 2019 (NPPF 2019) states in regards to ensuring the vitality of town centres, *'Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaption' (paragraph 85).*

It further states planning policies should *'promote their long-term vitality and viability by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries' (paragraph 85a) and 'define the extent of town centres and primary shopping locations, as part of a positive strategy for the future of each centre' (paragraph 85b).*

Policy TCR8 of the District Plan 2005 is relevant. The policy outlines that *'Within the designated Mixed Use Frontage in the primary retail core of Welwyn Garden City town centre, planning permission will be granted for changes of use of Class A1, A2 and A3 uses and for uses which provide community, leisure and cultural facilities. A minimum of 50% of any one linear frontage must remain in Class A1 retail use and a minimum of 80% in uses within Class A. In a Mixed Use Frontage where less than 50% of the linear frontage is in Class A1 Retail use, planning permission will not be granted for change of use to non-retail uses'.*

The proposed change of use would be to a nail/beauty salon, which would be classed as a sui-generis mixed use. The site makes up part of the frontage on the western side of Wigmores North. The ground floor frontage on this part of Wigmores North (34-54) is made up of 6 units of varying width, and has a total width of approximately 58 metres. The units in this row are summarised below:

Putterills – A2
Nature Health – A1
Connells – A2
Tabrizi (application site) – A1
Godshaw Jewellers – A1
Ladbrokes – Sui Generis

The unit's most recent use was as an independent clothing store (A1) and therefore the proposed change of use will result in the loss of retail space in the frontage. In this instance, half of the existing uses that make up this shopping frontage fall outside of an A1 use, of which a minimum of 50% should be retained within any one frontage.

As a result of the proposal, a total of 42 metres of the shopping frontage would not be within an A1 use and as such this would equate to approximately 72% of the total shopping frontage not within an A1 use. The proposal would therefore be contrary to Policy TCR8.

Policy SP16 of the Draft Local Plan Proposed Submission 2016 sets out the strategy for development in the Welwyn Garden City Town Centre. It indicates that new development should make a positive contribution to improving the town centre's viability and vitality, support the creation of a comfortable, safe, attractive and accessible shopping environment, as well as improve the overall mix of land uses.

In terms of the emerging Local Plan, the site is located within a Secondary Frontage. Policy SADM4 of the Local Plan states within such frontages, the Council will support proposals for change of use provided that;

- *At least 30% of the secondary frontage (by length) will remain in A1 use*
- *There will be no more than five adjoining units in uses other than A1, and*
- *There will be no loss of an existing active frontage to a non- active frontage.*

Planning permission will only be granted as an exception to the criteria in this policy where there are overriding benefits to the overall vitality and viability of the relevant Town Centre. It will also need to be demonstrated through active and extensive marketing over a period of at least 12 months that there is a lack of demand for an A1 retail use in that location'.

With regard to criterion 1, the remaining A1 units would only represent approximately 27% of the frontage and therefore the proposal is in conflict with the first requirement. There would not however be more than five adjoining units in uses other than A1 retail, thus satisfying the requirement of criterion 2 and additionally it is considered that the proposal would meet the third criteria as an active frontage would not be lost.

The proportion of retail units in this linear frontage would be considerably below the threshold, resulting in a concentration of non-A1 retail units within this shopping parade. Therefore the proposed development is contrary to Policy TCR8 of the District Plan 2005 and some of the criteria of Policy SADM4 of the Draft Local Plan Proposed Submission 2016.

In order for planning permission to be considered contrary to the criteria above, Policy SADM4 states that there will need to be an overriding benefit to the vitality and viability of the centre and it will need to be demonstrated through active and extensive marketing over a period of at least 12 months that there is a lack of demand for an A1 retail use. The onus is therefore on the applicant to provide evidence that active and extensive marketing has taken place over a period of 12 months. Marketing documentation was submitted alongside the application.

Marketing

40 Wigmores North has been vacant since September 2018 and evidence submitted by the applicant shows that the property was comprehensively marketed between 9th October 2018 and 1st August 2019 (as per the marketing activity schedule). The supporting document however suggests that the marketing has been continuous since October 2018 and at the time of submission, the premises had been marketed for approximately 14 months.

The information contained within the marketing activity schedule included marketing on the internet (a list of websites is provided in the marketing letter dated 13/11/2019) and details were also advertised by posting hard copies of marketing particulars to female and male fashion retailers in surrounding towns. In addition, information about the property was also included on a list of retail properties Brasier Freeth were marketing, which is sent out monthly to over 1,000 retail applicants. The property itself also continued to be physically marketed for retail use with an advertisement

board on the building.

The marketing campaign has not resulted in any firm offers from a Use Class A1 retail operator. The reasons why no A1 retailers have taken a lease are generally related to low footfall, the economy or the internal economy of companies and the size of the premises. In addition, it is a relevant point to make that there has been no substantive interest, current applicants aside, since 3rd May 2019 which, at the time of submission, was just over six months prior and half-way through the marketing period. This is despite the property remaining on websites, and ongoing direct circulation to the firms' databases.

As a result of the above, the agent has concluded that there is a very low possibility of attracting a Use Class A1 retail tenant on a standard lease term to the property in the near future. Based on the evidence provided, it would appear that due to a number of variables such as the economic climate or size of premises that the premises is not suitable for an A1 retailer to enter into a lease. Based on the evidence provided, it is therefore considered that active and extensive marketing has been undertaken over a period of more than 12 months in accordance with Policy SADM4 of the Draft Local Plan Proposed Submission 2016.

This is also a material consideration in relation to Policy TCR8.

Vitality and viability of the town centre

The onus is also on the applicant to provide evidence that the grant of a change of use is an exception to the above criteria listed in SADM4 of the Draft Local Plan Proposed Submission 2016 with there being an overriding benefit to the vitality and viability of the centre.

The supporting information document notes that a nail bar would bring the vacant unit back to life, create employment and broaden the offer of choice in this part of the town centre. It would also attract regular short term visits by customers.

In Section 6 (Building a Strong, Competitive Economy), the NPPF advises that planning policies and decisions help create the conditions in which businesses can invest, expand and adapt. Paragraph 80 states that '*significant weight*' be given to the need to support economic growth, taking into account both the needs of local businesses and wider opportunities for development. Paragraph 81 requires that planning policies "*be flexible enough to accommodate needs not anticipated in the plan... allow for new and flexible working practices... and to enable a rapid response to changes in economic circumstances*".

The investment of the premises would support economic growth of the town centre in a changing retail environment. Whilst it is acknowledged that there is a concentration of non-A1 uses within this shopping parade, it is considered that the sui-generis use would be complementary to the wider retail function. It is agreed that it is likely that replacing a vacant unit with an active frontage would increase the number of persons visiting the building and town centre compared to current situation. Employment opportunities are also a clear benefit of the proposed scheme.

The applicant suggests that the conflict with policy is more 'definitional' whereas close examination of the nature of the use, supported by comprehensive marketing, justifies an exception because there is not likely to be any actual harm occasioned to the town centre. It is considered that whilst the supporting information available is limited, the use of the site as a nail bar/beauty salon rather than a vacant premises is considered to be in accordance with Section 7 of the NPPF (Ensuring the Viability of Town Centres). Paragraph 85 (a) requires local planning authorities to define a hierarchy of town centres, while allowing them to grow and diversify in a way that can respond to rapid changes in both the retail and leisure industries, and to define the extent of these centres and make clear the range of uses permitted in such locations as part of a positive strategy for the future of each centre. Permitting the use of the premises as a nail salon and beauty salon would be compatible with

this guidance as it would respond to the change in demand for town centre uses.

In support of this view, reference is made by the applicant to a recent appeal (ref: APP/E5900/W/19/3234593) which was allowed on the 8th October 2019. The appeal notes that whilst the proposal for a change of use from an A1 retail to a nail bar was contrary to local planning policy, nail bars are considered to be comparable to hairdressers which fall under an A1 use. In addition, the appeal decision acknowledged that the over-saturation of nail bars could harm the functioning of a shopping centre, however this was not deemed to be the case and this should be determined on a case by case basis. The lack of harm was taken as a material consideration that indicated the appeal should be decided otherwise than in accordance with the development plan.

Substantial weight should be given to the fact that the existing retail unit is vacant and has been for over a year, and the development would not undermine the function of the frontage. As the unit is located within a parade of shops and nail bars/beauty salons are comparable to hairdressers, which are a main town centre use, it is considered unlikely that the change of use would have an adverse impact on the vitality of the centre. Furthermore, it is acknowledged that the investment of this premises would enhance the appearance of the Conservation Area and this is considered a material consideration with significant weight attached.

Summary

In conclusion, the proposed development would result in an even higher proportion of non-A1 use class uses and a very low proportion of A1 use class uses within this secondary frontage. It is therefore in conflict with Policy TCR8 of the District Plan 2005, and does not meet all the criteria set out in draft Policy SADM4 of the Draft Local Plan Proposed Submission 2016.

However, the final paragraph of Policy SADM4 of the Draft Local Plan Proposed Submission 2016 indicates that planning permission could be granted for changes of use as an exception to the above criteria subject to there being an overriding benefit to the vitality and viability of the centre; and that active and extensive marketing has taken place over a period of 12 months. Additionally planning law requires that planning applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

Taking into consideration the assessment above, it is considered that the marketing evidence demonstrates that there is little to no market for an A1 use in this location and that the change of use to a nail bar and beauty salon would be appropriate and would support the town centre strategy to increase the diversity of uses in the centre. The Council acknowledges that the proposed change of use would result in a concentration of non-A1 units within this shopping parade. However, a high percentage of this shopping parade has already been lost to non-A1 units.

Therefore taking a balanced approach, the principle of development is acceptable and no objections are raised with regard to the aims of NPPF 2019, Policies SD1, GBSP2, and TRC8 of the District Plan 2005 and Policies SP1, SP5, SP16 and SADM4 of the Draft Local Plan Proposed Submission 2016.

Would the development reflect the character of the building?

Yes No N/A

Comment (if applicable):

No external alterations are proposed, however it is considered that the appearance of a sui-generis nail bar/beauty salon would be in keeping with the surrounding commercial properties, especially when considered in comparison to similar hairdressing establishments within the surrounding area. It is therefore considered that the proposal would not have a detrimental impact on the character or appearance of the site, the street scene or the town centre in general.

Would the development maintain the amenity of adjoining occupiers? (e.g. privacy, outlook, light etc.)

Yes No N/A

Comment (if applicable):

Policies D1, R19 and the Supplementary Design Guidance aim to preserve neighbouring amenity. In addition, the NPPF seeks to secure high quality design and good standard of amenity for all existing and future occupiers of land and buildings. One neighbour comment has been received, which is in support of the application.

The proposal would not have any harmful impact on the living conditions of the adjoining occupiers of neighbouring properties by way of overbearing impact, loss of privacy or loss of light.

Odour

The applicant has provided additional information as requested by the Public Health and Protection Officer in respect of odour and extraction equipment to be installed on the premises should planning permission be granted. However, this information is limited in terms of how it operates and there is no floor plan for where and how many employees are to work within the premises at one time. It is understood that the applicant is unsure on the number of employees that will work at any one time or the layout that they will use internally, which would be useful in determining the extent of any odour control requirements. It is also not clear if there are residential properties above the proposed change of use, and even so, there may still be implications in terms of potential impact on neighbouring commercial properties. As such, it is considered necessary to impose a condition for odour control measures to be submitted and agreed by the LPA within one month of operation.

Noise

Additional conditions in relation to opening hours are recommended. However, through the provision of evidence that shows the business will not cause a loss of amenity, or through the actual operation of the business, then the recommended hours could be varied. The restriction of the hours of opening to what would be reasonable would limit the noise and disturbance impacts upon the surrounding properties

Considering the town centre location of the premises and subject to the hours of opening being restricted to what would be reasonable, the change of use would therefore not have an adverse impact upon the amenities of the neighbouring occupiers.

Subject to conditions, the proposed development would retain an acceptable level of amenity with neighbouring properties, and complies with Policies D1 and R19 and the NPPF.

Parking and Highway Safety

The application site does not currently have any allocated onsite car parking spaces and none are proposed as part of the development. Insufficient information has been provided in terms of the number of spaces that would be allocated for the equivalent 2 full-time staff. However, the intensity of the proposed use when compared with the existing and nearby uses is not considered to be detriment to highway safety to warrant refusal. Hertfordshire Highways present no objections to the proposal.

Furthermore, the application site is located within the centre of Welwyn Garden City, close to a number of public car parks, the Train station and bus station are within a short walk from the site. It would therefore be unreasonable to refuse planning permission on the grounds of parking alone.

Conclusion

Subject to the suggested conditions, the proposed development would accord with the relevant

national and local planning policy.

Conditions:

1. One month prior to the first occupation of the premises as a nail bar/beauty salon, the applicant shall write to the Local Planning Authority outlining the first date of operation of the unit hereby permitted. Thereafter, within one month from the first date of operation as disclosed in the letter, the applicant is to supply to the Local Planning Authority details relating to the control of odour within the premises. These details to be submitted shall include:
 - a. How many nail bar operatives are to operate at any one time;
 - b. The number and location of odour control units to be used;
 - c. How the odour control units operate, and;
 - d. Details of ventilation within the premises and;
 - e. The rationale which explains the reasons on how odour is to be controlled.

The approved odour control units/system must then be implemented as approved and must be maintained in accordance with the manufacturer's instructions to ensure its continued satisfactory operation.

REASON: To protect the residential amenity of the occupants of nearby properties in accordance with the National Planning Policy Framework and Policies R19 and D1 of the Welwyn Hatfield District Plan 2005.

2. The use of the premises for a nail bar/beauty salon shall not operate other than between the hours of 09:00 – 18:30 Monday to Saturday and 10:30-17:00 On Sundays and Bank Holidays, and at no time outside of these hours. No customer shall be permitted to be on the premises outside of these times.

REASON: To protect the residential amenity of the occupants of nearby properties in accordance with the National Planning Policy Framework and Policies R19 and D1 of the Welwyn Hatfield District Plan 2005.

DRAWING NUMBERS

2. The development/works shall not be started and completed other than in accordance with the approved plans and details:

| Plan Number | Revision Number | Details | Received Date |
|--------------------|------------------------|---------------------|----------------------|
| Location Plan | | Site Location Plan | 18 November 2019 |
| 40/01 | | Existing Floor Plan | 21 November 2019 |
| AK2/4 | | Existing Elevations | 21 November 2019 |

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

1. POSITIVE AND PROACTIVE STATEMENT

The decision has been made taking into account, where practicable and appropriate the requirements of paragraph 38 of the National Planning Policy Framework and material planning considerations do not justify a decision contrary to the development plan (see Officer's report which can be viewed on the Council's website or inspected at these offices).

Informatives:

1. This permission does not convey any consent which may be required under any legislation other than the Town and Country Planning Acts. Any permission required under the Building Regulations or under any other Act, must be obtained from the relevant authority or body e.g. Fire Officer, Health and Safety Executive, Environment Agency (water interest etc.) Neither does this permission negate or override any private covenants or legal interest (easements or wayleaves) which may affect the land.
2. You are hereby advised that any alterations to the shopfront would require an application for planning permission, or if the alterations were to involve a new fascia sign, they would require advertisement consent.

Determined By:

Mrs Sarah Smith
16 January 2020