

38/13/0487

LAIRA PROPERTIES LTD

**CHANGE OF USE FROM CLASS A1 (SHOPS) TO A3/A4/A5 (RESTAURANTS & CAFES/DRINKING ESTABLISHMENTS/HOT FOOD TAKEAWAYS) AT 39 EAST STREET, TAUNTON**

Location: 39 EAST STREET, TAUNTON, TA1 3LS

Grid Reference: 323077.124544

Full Planning Permission

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**RECOMMENDATION AND REASON(S)**

Recommended Decision: Conditional Approval

**RECOMMENDED CONDITION(S) (if applicable)**

1. The development hereby permitted shall be begun within three years of the date of this permission.

Reason: In accordance with the provisions of Section 91 Town and Country Planning Act 1990 (as amended by Section 51(1) of the Planning and Compulsory Purchase Act 2004).

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

(A4) Site Location Plan

Reason: For the avoidance of doubt and in the interests of proper planning.

3. Prior to any use hereby permitted is commenced, details of any flue/extraction system, including specifications of noise, must first be submitted to and approved in writing by the Local Planning Authority.

Equipment shall be installed that will effectively suppress and disperse fumes and/or smell produced by cooking and food preparation as impacting upon neighbouring premises. The equipment shall be effectively operated for as long as the use continues. The extraction equipment shall be regularly maintained to ensure its continued satisfactory operation.

The external ducting should be so designed that the flue discharges not less than 1 metre above the roof eaves level.

Reason: To ensure that the proposed development does not prejudice the amenities of the locality by reason of odour and noise which would be contrary to Taunton Deane Core Strategy Policy DM1.

4. There shall be no external seating or use of an outside area within the curtilage of 39 East Street without the granting of planning permission.

Reason: To safeguard the amenity of the area in accordance with Policy DM1 of the Taunton Deane Core Strategy.

5. Bin storage must be provided within 39 East Street prior to any use being implemented and must thereafter be retained.

Reason: To safeguard the amenity of the area in accordance with Policy DM1 of the Taunton Deane Core Strategy.

#### Notes to Applicant

1. In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has imposed planning conditions to enable the grant of planning permission.
2. You are advised that a separate Listed Building Consent is required for any proposed internal or external alterations involve with the implementation of this proposal and should be submitted before any works commence and the granting of planning permission does not imply that a subsequent listed building proposal would be agreed.

## **PROPOSAL**

The proposal comprises the change of use of a building from A1 (retail) to A3/A4/A5 (restaurants & cafes, drinking establishments, hot food takeaway). The application is proposing a variety of uses as no end user has been identified and the variety of uses will allow for wider marketing of the building that is currently vacant.

No external or internal alterations are proposed.

Permission was previously granted for the same proposal in 2010 (application 38/10/0083).

## **SITE DESCRIPTION AND HISTORY**

The three storey building is grade II listed, sited in Taunton town centre within the Secondary shopping frontage. The facade of the building retains many original features while internally there have been alterations to accommodate a variety of

uses.

The building is within a close proximity of a variety of uses including retail, restaurants and drinking establishments. The rear of the buildings curtilage adjoins a residential development sited to the rear of East Street (Eastgate Gardens).

39 East Street was last used as a photographic studio but has been vacant for approximately 6 years. Other previous uses of the building include various restaurants, drinking establishments, retail and a hairdressers.

## **CONSULTATION AND REPRESENTATION RESPONSES**

### **Consultees**

#### *ENVIRONMENTAL HEALTH - ENVIRONMENTAL PROTECTION -*

If the premises changes use to a restaurant or take-away there is the potential for odours and noise from any extraction system to affect nearby residents. The application does not include details of an extraction system or any other proposed changes to the property.

The best way to deal with cooking odours is to have an extraction system that vents at high level, ideally 1m above the roof eaves or any nearby dormer/velux window. At some premises there can be problems with installing high level flues due to the appearance (especially with listed buildings) or ownership of the premises above/adjacent to the restaurant. Therefore, it would be good if the applicant could provide details to show that it is possible to install an extraction system that would allow a flue to vent at a high level, even if it did not need to be installed unless required.

If it is not possible to install a high level flue the operators could have to use other odour control systems (e.g. carbon filters, which need ongoing maintenance) that may not be as effective as a high level discharge.

If permission is granted I would recommend that a condition is used to ensure that details of any extraction systems are submitted and agreed before they are installed. A condition can also be used to control noise levels from the system (see below).

If there are any problems with odour or noise the Environmental Health Section has a duty to investigate complaints and can require the operators to take further action if they are causing a nuisance to any neighbours. However, we can only require the operator to use best practice and there could still be some noise and odours noticeable after a suitable system has been installed.

#### *HERITAGE -*

39 East Street is a Grade II Listed Building. Although this application does not include any physical alterations to the building, it is very likely that changes will be required in order for the proposed new use to be put into effect. If permission is granted it may therefore be worthwhile including an informative note that alterations

affecting the character or appearance of this building will require Listed Building Consent before being carried out.

## **Representations**

TWENTY SEVEN IDENTICAL LETTERS from Chairman of Eastgate Gardens Residents Association, signed by individual property owners/occupiers raising the following:

- Not possible to be for or against without a significant number of observations being addressed: -

### Restaurants

- Enforcement of seating capacity.
- Inclusion of outdoor dining in courtyard?
- How will stock be delivered, as no parking to front or back of building?
- Where will waste food disposal/storage take place?

### Cafes/drinking establishments

- Hours of sale of alcohol?
- Deliveries (see above)
- Will courtyard be used as drinking area?
- Capacity, if different from a restaurant

### Hot food takeaway

- Capacity restrictions?
- Waste disposal (as above).
- Will waste food be stored in courtyard?
- Will Committee consider fire, health and safety regulations? Use of fire door (is this for staff only)?
- Human Rights relating to Eastgate Gardens rights to privacy and family life.
- TDBC Duty of Care to residents of Eastgate Gardens and to customers evacuating the premises through fire door, in large numbers in front of gardens and bedroom window area during an emergency.
- Will Risk Assessment be made into evacuating of persons, having consumed alcohol, into Eastgate Gardens and into residents?

### TWO LETTERS OF SUPPORT FROM WARD COUNCILLORS: -

- New business welcomed by everyone; type of business of importance to local residents who could be disadvantaged if considered not given to concerns.
- Rear garden of property too small to be used as an outside space.
- Rear door too small for ingress or egress and in my opinion a fire exit.
- Fire exit opens onto a property 3m or so from a living room window; access unsatisfactory given slope, particularly in wet conditions.

- No vehicular access to rear; deliveries would have to be from front on double yellow lines close to two sets of traffic lights.
- Formally request application goes to planning committee.

## **PLANNING POLICIES**

DM1 - TD CORE STRATEGY - GENERAL REQUIREMENTS,  
CP8 - CP 8 ENVIRONMENT,  
T21 - TDBCLP - Secondary Shopping Areas,  
NPPF - National Planning Policy Framework,

## **LOCAL FINANCE CONSIDERATIONS**

None.

## **DETERMINING ISSUES AND CONSIDERATIONS**

### Use

The building is sited within the Secondary Shopping Area of Taunton town centre. Within the secondary area a variety of uses are allowed beyond that of A1 (retail) and such uses include cafes, restaurants, takeaways, financial and professional services and would include public houses. As such, the proposed A3/A4/A5 uses are considered acceptable in this location.

### Amenity

Extraction - The Environmental Health Officer has identified that there is some potential for odours from the proposed uses. As no end users is identified a condition has been suggested that would secure details of any extraction system before installation. It is considered that a condition requesting a planning application for any extraction system is most appropriate.

It should be noted that the building has been used as a restaurant before and there is an existing flue projecting through one of the structures at the rear of the building.

Courtyard - There is currently no courtyard area to the rear of the building that could be used for external seating as most the area is covered. Notwithstanding this, without details of any proposed use, a condition preventing any external space within the curtilage of 39 East Street from being used as an outdoor seating area etc would safeguard nearby residential amenity. This condition could be reviewed once a use has been identified.

The rear of the building also provides sufficient space to accommodate any bin storage that would be required.

Fire Exit - At the rear of the buildings curtilage there is a fire exit door that has access onto a shared area fronting onto the entrance of two properties in Eastgate Gardens. Whilst the entrance is within close proximity to the properties, there has always been an entrance to 39 East Street at this point. One of the plans on file for the planning application in 1988 for the development of land to the rear of East

Street (Eastgate Gardens) indicates a service access for 39 East Street.

The exit/fire exit has been in place for the previous retail use, drinking establishments and restaurants. There is no reason to believe that the rear access will be used in a different way. There is other legislation such as Building Control that may look into fire safety requirements and any changes that may have to be undertaken depending on a proposed use of number of people within a building.

Notwithstanding the above, the use of the exit/fire exit and access across land to the front of the two properties in Eastgate Gardens would have been made under civil agreements.

Opening hours - No opening hours have been suggested given the variety of uses that are being applied for. As opening hours will be enforced by Licensing it is not considered necessary to condition opening hours.

### Heritage

The Conservation Officer has not objected to the principle of the proposed uses of the building. As no physical alterations are proposed a note will be advised to the applicant that Listed Building Consent may be required for any internal or external alterations.

### Highways

Whilst there is no parking to the front of the building, or a dedicated service yard, the building has managed to function as a variety of uses that have required deliveries without the detriment to highway safety. Within a town centre location it is not uncommon that business units throughout the town have a similar situation. The limited amount of deliveries and the time spent on each delivery is also not considered detrimental to highway safety nor would it have been any different for the previous retail use of the building.

### Other matters

The capacity of the building and enforcing the capacity; the sale of alcohol and the use of a courtyard as a drinking area are concerns that are also covered by other legislation and not matters for determination within this planning application.

### Conclusion

Any of the proposed uses are considered an acceptable one in policy terms given the location within the secondary retail frontage it would comply with retained policy T21 of the Local Plan. The amenity of the local residents can be protected by licencing of the premises and proposed conditions regarding future extraction equipment and outdoor space. As such, given the above, the previous permission and previous uses of the building the proposal is considered to be one that can be supported.

**In preparing this report the Planning Officer has considered fully the implications and requirements of the Human Rights Act 1998.**

**CONTACT OFFICER: Mr D Addicott Tel: 01823 356463**