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## Appeal Decision

Hearing Held on 19 May 2021

Site visit made on 21 May 2021

**by B Davies MSc FGS CGeol**

**an Inspector appointed by the Secretary of State**

**Decision date: 4 June 2021**

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### **Appeal Ref: APP/G3110/W/20/3257193 58A St Clements Street, Oxford, OX4 1AH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Oxford International School against the decision of Oxford City Council.
  - The application Ref 20/00246/FUL, dated 28 January 2020, was refused by notice dated 9 April 2020.
  - The development proposed is the 'temporary' change of use from restaurant (A3 use class) to cafeteria (sui generis use class) for use by higher education students, and provision of secure cycle parking.
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### **Decision**

1. The appeal is dismissed.

### **Application for costs**

2. An application for costs was made by Oxford City Council against the Oxford International School. This application is the subject of a separate Decision.

### **Preliminary matters**

3. Work on the change of use began in July 2019 and was completed by the following October, and the application is therefore retrospective. I am satisfied that the development carried out is the same as that applied for, with the exception of bike storage, which has not been constructed yet.
4. An application<sup>1</sup> for a similar development on the same site was withdrawn in October 2019, following indication from the Council that it was intending to refuse. The main difference between the applications is that the current proposal is for a temporary period of 3 years.
5. The Oxford Local Plan 2036 (the OLP) was adopted in June 2020, since the determination of the application. The Oxford Local Plan (2001-2016) referred to in the decision notice has therefore been superseded. Of note is that the decision notice refers to Policy RC5, which has been replaced entirely by Policy V4 of the OLP. This decision relies upon policies in the current OLP.
6. The Government reformed the Town and Country Planning (Use Classes) Order 1987 (as amended) from 1 September 2020 to, among other things, revoke Class A and create a new 'E' use class to provide greater flexibility for high

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<sup>1</sup> 19/01697/FUL (validated 9 July 2019)

streets. However, the existing rights continue to have effect until 31 July 2021 in respect of applications submitted prior to this September 2020, and the references to Class A in Policy V4 are therefore still valid for this appeal.

7. Hyperlinks to listed building descriptions were provided during the hearing. This would not normally be an acceptable format because as web pages are updated, parties could potentially be consulting differing information. The evidence is required for me to discharge my duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and for this purpose the information provided is appropriate. The effect on listed buildings is not a matter of contention between the parties and I consider it extremely unlikely that the listed building descriptions have changed over the period of the application. For these reasons, I am satisfied that no party would be prejudiced by my acceptance of the hyperlinks on this occasion.

### **Main issue**

8. The main issue is the effect of the development on the vitality and viability of the St Clements Street shopping frontage and the wider local centre.

### **Reasons**

9. The appeal site comprises a substantial 3-storey building and small car park at the junction of St Clements Street and Boulter Road. The building has a row of large, picture windows facing both roads along the ground floor. The lower part of these is covered with opaque stickers, providing a degree of privacy for those inside. There is a single front door facing the junction, which is locked from the outside for security purposes. The ground floor operates as a cafeteria for students and staff from the nearby Oxford International School (OIS).
10. I observed that St Clements Street is a busy thoroughfare for traffic. The side of the street on which the site is located comprises a mixture of residential and retail development. The site is prominently located about halfway along the St Clements Street shopping frontage and is one of the largest properties in the area.

### *Policy*

11. St. Clements Street, on which the site is located, is defined as a 'local centre' for the purposes of Policy V4 of the OLP. This policy states that planning permission should only be granted in this zone for Class A uses, or for other town centre uses if the proportion of Class A remains above 85%. The main objective of Policy V4 is to ensure that the shopping frontage retains its vitality and viability.
12. It is not in dispute that a private cafeteria is neither a Class A use nor other town centre use, as defined in the glossary of the National Planning Policy Framework (2019) (Framework). The proposal therefore does not meet the requirements of Policy V4.
13. At the hearing, the Council confirmed that its intention was to replace references to Class A in Policy V4 with a reference to Class E in the future. It was agreed by both parties that a private cafeteria would not fulfil a Class E use and for this reason would also not meet the requirements of Policy V4 in the future.

14. It was agreed at the hearing that the Council's 2017 retail survey should be relied upon, which suggests that the proportion of Class A uses in the local centre is at 92%. There is therefore scope under Policy V4 to introduce town centre uses other than Class A. I acknowledge that the cafeteria is not a town centre use, but I consider it reasonable to contemplate other uses where these would accord with the objective of maintaining the vitality and viability of the shopping frontage and wider local centre.

*Effect on the vitality of the shopping frontage*

15. One of the purposes of Policy V4 is to provide local facilities for communities and I consider accessibility to the building by the wider public to be a critical factor in defining vitality. The cafeteria is for the sole use of pupils and staff from the OIS. The school may be part of the community, but the fact that the wider public are excluded is crucial to the sense that the development is divorced from the neighbourhood.
16. It is suggested by the appellant that the local population is 'transient' because it is dominated by HMOs and students and that it follows that they would not frequently use local services. Notwithstanding that the Council disagrees with this description, I can see no reason why such residents would not make use of local facilities and have no evidence before me to the contrary.
17. It was agreed at the hearing that existing window stickers could be removed, and that new signage would help integrate the building with the street. While accepting that these actions would improve the permeability between the street and building, I consider the fact that the front door would remain locked a major factor in not presenting an active frontage to the street. In addition to appearing inaccessible, the building is clearly institutional in character, which exacerbates the sense that this is not part of a lively street frontage. I consider that the overall lack of active, open frontage harms the vitality of the street.
18. I acknowledge that not all the retail premises along St Clements Street have active frontages. However, this building is unusual for its size and prominence, which makes presentation of a locked frontage and closed character particularly harmful to the vitality of the street at this location.
19. Although I was unable to observe it at the site visit, I have no reason to doubt that a large number of students access the building, particularly during mealtimes when approximately 200 students and staff walk the short distance to and from the school. This number of people walking up and down the street would contribute to a sense of vitality, but this would predominantly be for short, intense bursts during the day. I do not have any objective evidence before me to confirm that this would be an overall increase in footfall compared to the previous use as a restaurant.
20. Although the development causes a significant number of people to walk along St Clements Street, the fact that the building is not available to the community and in appearance is institutional and locked, means that the vitality of the shopping frontage has been harmed.

*Effect on the viability of the shopping frontage*

21. The appellant argues that the additional footfall between the school and appeal site contributes to the viability of the street. At the site visit, I noted 3 food

takeaways, an estate agent, a driver recruitment centre and a newsagent along the approximately 100 metre stretch between the college and the cafeteria.

22. I do not consider it likely that students and staff are patronising the food outlets during the extra trips created, given that these are caused by visits to the cafeteria. Of the remaining shops, the only likely destination for pedestrians from the school is the newsagent. The mix of retail premises on the rest of St Clements Street is similar, with only a barbers and clothes shop providing likely non-food destinations for students and staff. The non-food retail opportunities for spending along the high street are therefore limited. In addition, these are shops which could be visited in breaks and on journeys to and from student accommodation, which further reduces the likelihood that there is additional spending generated.
23. Although I accept that an increase in footfall could increase the potential spending on the street, for the reasons above I consider that the scale and therefore benefit from this is negligible.

*Other considerations – whether or not the building was likely to remain empty*

24. It would not be desirable to have an empty retail premises on St Clements Street for a long period of time, given the harm that this would cause to the vitality and viability of the shopping frontage and wider local centre. If it could be demonstrated that the property was likely to have remained empty and fall into a serious state of disrepair, then I consider that this would be a matter of some weight.
25. The property had been unsuccessfully marketed as a restaurant prior to OIS occupying the site. At the hearing it was established that the period of marketing was uncertain but was for no more than 7 months. I have nothing before me to demonstrate that marketing was at a realistic price, although I accept that it was marketed by professional agents and that, as the owners were retiring, they did not want to hold onto it any longer than necessary. Policy V4 requires that marketing is undertaken for at least a year, and I do not consider that the marketing exercise was undertaken for long enough to be confident that a Class A3 use was not a viable option.
26. While the extant permission includes a restriction confining its use to Class A3, the Council confirmed at the hearing that in principle it would have supported an application for another town centre use. No other Class A, Class E or other town centre uses were marketed, and I therefore have no evidence before me that an alternative town centre use could not be found.
27. I have read a letter from the previous owners of the restaurant identifying the factors that, in their experience, made running a restaurant at this location increasingly difficult. These included being located on the edge of the shopping area, limited footfall and competition from restaurants associated with the new Westgate shopping centre in the centre of the city. While I do not doubt that this was their perception, I consider that being located beyond the town centre is likely to create a demand for local facilities, and I observed several restaurants along St Clements Street that appeared to cater for local demand. In addition, and critically, their observations all relate to the restaurant industry, and do not apply to other town centre uses that the building could potentially be used for.

28. I have considered whether there is a pattern of empty premises in the area that could be indicative of decline. Data from July 2020 presented by the appellant suggest that approximately 35% of the units were closed, which the Council agreed at the hearing was a higher proportion than would be expected. However, I am mindful that this was several months after the first COVID 19 lockdown and for this reason place less reliance on these numbers than I might otherwise have done. I also have no evidence before me that suggests the number of empty units is part of a sustained decline in the shopping frontage.
29. The appellant has drawn an appeal in the Forest of Dean<sup>2</sup> to my attention. In this case, the building on the high street had been empty for approximately 3 years and the cost of retrofitting the building for retail use was demonstrably prohibitive. These reasons are not directly applicable to the case before me and I therefore do not consider that it forms a precedent.
30. Given the lack of marketing to demonstrate that a town centre use for the site cannot be found, and in the absence of evidence that there is a sustained decline in commercial activity locally, I am unable to conclude that the premises would have remained empty in the long term.

*Other considerations – alternative locations for the cafeteria*

31. Relocation of the cafeteria from the main campus allowed expansion of teaching facilities, which meant that more students could be enrolled at the school. At the hearing it was clarified that the additional students were able to be absorbed into surplus accommodation. I therefore do not find significant conflict with Policy E2 of the OLP, which protects the housing supply from expansion of educational institutions.
32. I am in no doubt that the Oxford International School is a highly successful enterprise and my attention has been drawn to the strong support for economic growth that is provided in paragraph 80 of the Framework. If this site was demonstrably the only suitable location for the cafeteria to allow for such growth, then this would be a matter of some weight.
33. It is not in contention that the cafeteria needs to be close to the school. However, although alluded to, no information has been provided to demonstrate that other sites have been, or are being, searched for in earnest. I appreciate that the constraints on development in Oxford make finding suitable sites problematic, but evidence that there are no other premises in policy compliant locations nearby is not before me.
34. In addition, the OLP has been recently adopted and, as such, the policies are up to date, including provision for support of economic growth and productivity. However, such development must be in appropriate locations.
35. Although there would be a benefit to the economy from expansion of the school, there is no evidence before me that it has to be at this location, and any benefits are therefore clearly outweighed by the significant harm to the vitality and viability of the high street and wider local centre.

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<sup>2</sup> APP/P1615/W/19/3241049 (2 July 2020)

*Other considerations – temporary permission*

36. The Planning Practice Guidance<sup>3</sup> states that temporary permission may be appropriate where a trial run is needed or for a 'meanwhile use'.
37. A trial run is appropriate to assess the effect of a development on an area. In this case the proposal is submitted on a retrospective basis and the harm to the vitality and viability of the high street and local centre from the development is significant. A trial run is therefore not justified.
38. I am mindful that COVID 19 has likely harmed the high street in the short term and the appellant's argument, that it would be better to have a cafeteria at this location than an empty building while the economy recovers, has some merit. However, in addition to lacking evidence that a policy compliant use cannot be found, I do not have any information before me on which to base a reasonable prediction about how high streets will likely evolve over the next 3 years.
39. As COVID 19 restrictions are now being eased in accordance with the Government's road map, I consider it entirely possible that shoppers will return to the local high street. Given the appeal building's size and status, and in the absence of robust marketing, there remains a real potential for it to be used again for a town centre use. Furthermore, the opportunity for potentially important re-growth could be lost if a temporary permission was granted.
40. I consider it far from I am therefore not persuaded that a temporary permission would be appropriate in this case.

*Other matters*

41. I have not considered changes to external signage, as this is a matter that would need to be controlled under separate legislation.
42. The appellant has drawn my attention to paragraph 94 of the Framework, which requires that great weight is given to the expansion of schools. However, this is in the context of meeting the education needs of communities. The appellant has not demonstrated that the school supports the educational needs of the local community, despite prompting at the hearing, and I therefore do not consider this policy relevant.
43. I agree in principle that it is preferable to use a brownfield site for the enterprise as opposed to a greenfield site. However, paragraph 118 of the Framework requires that the brownfield site is 'suitable' and fulfils an identified need, neither of which have been proven at this location.
44. It is suggested that the development would enhance the amenity of neighbouring residents through a reduction in anti-social behaviour and noise. However, there is no evidence that these were problems when the building was used as a restaurant and I therefore do not consider this a benefit.
45. The site is in the St Clements and Iffley Road Conservation Area (CA). The CA Appraisal<sup>4</sup> describes the significance of the area in relation to its layout, views, and the age and structure of its buildings. The external changes to the building are minimal and I am satisfied there the character and appearance of the CA have been preserved.

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<sup>3</sup> Paragraph: 014 Reference ID: 21a-014-20140306 (Revision date: 6 March 2014)

<sup>4</sup> Oxford City Council, February 2009

46. Grade II listed Port Mahon Inn on the opposite side of the road and St Clements Mission Hall, on the opposite site of Boulter Street, are listed for their architectural interest. The proposal would not affect the listed buildings and, given the minimal external changes, I am satisfied that their settings would also be preserved.

### **Conclusion**

47. The proposal conflicts with Policy V4 of the OLP and has caused harm to the vitality and viability of the St Clements shopping frontage and local centre. I have taken into account other material considerations, including whether the building was likely to remain empty, whether the cafeteria needs to be at this location to support the school, and whether there are particular circumstances relating to COVID that make a temporary permission appropriate. I have not found that these considerations carry significant weight and do not outweigh the harm to vitality and viability of the shopping frontage and local centre.
48. The proposal is therefore in conflict with the local development plan when read as a whole and the appeal should therefore be dismissed.

*B Davies*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mr Westerman, BA (Hons) DipTP MRTPI, Director, Edgars Limited

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Fowler, BSc (Hons) MRTPI, Team Leader (Development Management)

Mr Paterson, BA MSc Spatial, Senior Planning Officer

### OTHER INTERESTED PARTIES:

None

## **DOCUMENTS SUBMITTED AT THE HEARING**

Document 1: St Clements and Iffley Road Conservation Area Appraisal, Oxford City Council, February 2009

Document 2: List entry for the Port Mahon Inn ([hyperlink](#))

Document 3: List entry for St Clements Mission Hall with Number 57A ([hyperlink](#))