

Application Number:	P/FUL/2022/02129
Webpage:	https://planning.dorsetcouncil.gov.uk/
Site address:	Le Petit Canard Dorchester Road Maiden Newton Dorset DT2 0BE
Proposal:	Change of use from restaurant (Class E) to a single dwelling (Class C3).
Applicant name:	Mr and Mrs Craig
Case Officer:	Jo Langrish-Merritt
Ward Member(s):	Cllr Alford

1.0 This application has been brought to committee at the request of the Service Manager for Development Management and Enforcement following a member request via the scheme of delegation consultation.

2.0 Summary of recommendation:

Refuse

3.0 Reason for the recommendation:

In the absence of any definitive or conclusive information that a restaurant business could not continue as a viable concern or been demonstrated that there is no alternative community use for the premises. the proposed development is contrary to Local Plan Policy COM3 which seeks to retain village facilities. It would place greater reliance on travel to alternative locations for facilities and would devoid the village of an important community facility.

4.0 Key planning issues

Issue	Conclusion
Principle of development	Principle of change of use to a residential property acceptable as the site is within the DDB.
Loss of community facility	Loss of a restaurant facility within a sustainable village location.
Impact on Conservation area	Acceptable due to minimal changes although some concern due to loss of vitality.
Impact on amenity	No adverse impact.
Access and parking	No adverse impact.

5.0 Description of Site

The application site is located on the north-east side of Dorchester Road. The existing building has a restaurant at ground floor level with a self-contained residential flat (two bedrooms) on the first floor with a separate pedestrian access from Dorchester Road. Le Petit Canard is an attractive predominantly two-storey double fronted building. The building itself is located within the defined settlement of Maiden Newton. The area surrounding the site is predominantly residential in character and appearance. To the south east of the site are two retail units and the Chalk and Cheese public house.

6.0 Description of Development

Change of use of the restaurant area to form a single residential dwelling, incorporating the existing accommodation at first floor level. The proposed works would include the removal of a single storey attached store building at the rear of the property to provide additional external curtilage. All remaining works would be internal to change the property into a 4 bedroomed property. The alterations consist of the managers accommodation at first floor being reconfigured to create 4 bedrooms and a bathroom and the kitchen and restaurant at ground floor would be reconfigured to create kitchen, study, WC, dining and living accommodation. External changes would be kept to a minimum with just the removal of the attached store and a window blocked up in the rear elevation.

7.0 Relevant Planning History

None

8.0 List of Constraints

Grade: II* Listed Building: VILLAGE CROSS List Entry: 1216391.0;

Important Local Buildings

Maiden Newton Conservation Area

Landscape Character area; Chalk Valley and Downland; Upper Frome Valley

Area of Outstanding Natural Beauty; Dorset

Defined Development Boundary; Maiden Newton

EA - Areas Susceptible to Groundwater Flooding;

SSSI (5km buffer): Langford Meadow

SSSI (5km buffer): Hog Cliff ;

SSSI (5km buffer): Court Farm, Sydling

SSSI (5km buffer): Toller Porcorum

SSSI (5km buffer): Sydling Valley Downs

SSSI (5km buffer): Powerstock Common and Wytherston Farm

SSSI (5km buffer): Woolcombe ;

Flood Zone 3 (100m buffer)

Flood Zone 2 (100m buffer)

Poole Harbour Catchment Area

9.0 Consultations

All consultee responses can be viewed in full on the website.

Consultees

1. **Highways** – No objection
3. **Conservation Officers**- No objection
4. **Eggardon Ward**- No comments
5. **Building Control West Team**- No comments
6. **Maiden Newton PC**- The PC supports the change of use to a single dwelling for the Petit Canard and its owners, given that there are adequate and similar eating establishments within the local area as well as in the village that customers may wish to use and supports the owners wishes to continue to live in the village as they have done for the last 23 years. We hope this is sufficient to enable the planning department to support this request without the need for additional marketing data to be sought.
7. **Historic England**- No objection

Representations received

13 letters of support from local residents and buildings

- There are existing facilities within the village.
- Help other facilities to be more profitable.
- Improve amenity to neighbours due to the absence of ventilation and visitors.
- Concerns raised over the future use and the impact on neighbours if it is a noisy use.

These issues are explored further below.

10.0 Relevant Policies

Adopted West Dorset and Weymouth & Portland Local Plan:

The following policies are considered to be relevant to this proposal:

- INT1 - Presumption in favour of Sustainable Development
- ENV1 - Landscape, seascape & sites of other geological interest

- ENV2 - Wildlife and habitats
- ENV4 - Heritage assets
- ENV5 - Flood risk
- ENV10 - The landscape and townscape setting
- ENV12 - The design and positioning of buildings
- ENV16 - Amenity
- SUS2 - Distribution of development
- ECON3- Loss of community facilities

Neighbourhood Plans

Maiden Newton & Frome Vauchurch - In preparation – limited weight applied to decision making.

Other Material Considerations

National Planning Policy Framework:

Paragraph 11 sets out the presumption in favour of sustainable development. Development plan proposals that accord with the development plan should be approved without delay. Where the development plan is absent, silent or relevant policies are out-of-date then permission should be granted unless any adverse impacts of approval would significantly and demonstrably outweigh the benefits when assessed against the NPPF or specific policies in the NPPF indicate development should be restricted.

Relevant NPPF sections include:

- Section 5 'Delivering a sufficient supply of homes' outlines the government's objective in respect of land supply with subsection 'Rural housing' at paragraphs 79-80 reflecting the requirement for development in rural areas.
- Section 6 'Building a strong, competitive economy', paragraphs 84 and 85 'Supporting a prosperous rural economy' promotes the sustainable growth and expansion of all types of business and enterprise in rural areas, through conversion of existing buildings, the erection of well-designed new buildings, and supports sustainable tourism and leisure developments where identified needs are not met by existing rural service centres.
- Section 11 'Making effective use of land'
- Section 14 'Meeting the challenges of climate change, flooding and coastal change'
- Section 15 'Conserving and Enhancing the Natural Environment'- In Areas of Outstanding Natural Beauty great weight should be given to conserving and enhancing the landscape and scenic beauty (para 176). Decisions in Heritage Coast areas should be consistent with the special character of the area and the importance of its conservation (para 178). Paragraphs 179-182 set out how biodiversity is to be protected and encourage net gains for biodiversity.

Section 16 'Conserving and Enhancing the Historic Environment'- When considering designated heritage assets, great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance (para 199). The effect of an application on the significance of non-designated heritage assets should also be taken into account (para 203).

Supplementary Planning Documents/Guidance

Dorset AONB Landscape Character Assessment

Dorset AONB Management Plan 2019-2024

Southern and western area

Landscape Character Assessment February 2009 (West Dorset)

Conservation Area Appraisals:

Maiden Newton adopted January 2007

11.0 Human rights

Article 6 - Right to a fair trial.

Article 8 - Right to respect for private and family life and home.

The first protocol of Article 1 Protection of property.

This recommendation is based on adopted Development Plan policies, the application of which does not prejudice the Human Rights of the applicant or any third party.

12.0 Public Sector Equalities Duty

As set out in the Equalities Act 2010, all public bodies, in discharging their functions must have "due regard" to this duty. There are 3 main aims:-

- Removing or minimising disadvantages suffered by people due to their protected characteristics
- Taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people
- Encouraging people with certain protected characteristics to participate in public life or in other activities where participation is disproportionately low.

Whilst there is no absolute requirement to fully remove any disadvantage the Duty is to have "regard to" and remove or minimise disadvantage and in considering the merits of this planning application the planning authority has taken into consideration the requirements of the Public Sector Equalities Duty. With regard to the proposed alterations to the buildings in creating a larger dwelling that includes both floors disadvantages have been minimised in that there would now be the possibility of

sleeping accommodation at ground floor, providing easier access, than is the case currently with first floor accommodation only.

13.0 Financial benefits

Non material considerations

The proposal would result in the loss of business rates from the ceasing of the business and the conversion of the premise to a dwelling. Furthermore, there will be a loss to the general economy with the removal of this employment unit and any potential employment associated with it.

The development will be CIL Liable.

There will be some short-term employment benefits created from the conversion works to the building, but this would be minimal.

14.0 Climate Implications

The premises is situated in a sustainable location, as the village benefits from a bus stop and a train station. As such it could potentially serve a wider area than just the village. As such its loss is considered to place greater reliance on travel to alternative locations for similar facilities and this in itself would have an adverse impact on sustainability.

15.0 Planning Assessment

Principle

The site is located within the defined development boundary for Maiden Newton and is therefore in an area where, in accordance with policy SUS2, additional residential development is considered to be acceptable in principle, subject to compliance with other local plan policies

Loss of existing business / community facility

The loss of valued local community facilities and services can significantly reduce a community's ability to meet its day to day needs and will also have an adverse impact on the social interaction and wellbeing of that community. Proposals which would result in the loss of a community facility must demonstrate that efforts have been made to retain the facility and that opportunities for conversion to alternative community uses have been explored.

Policy COM3 of the Local Plan seeks to protect community uses and typically requires evidence to be submitted which demonstrates:

- Details of how the property has been marketed, the length of time that the marketing was active and any changes during this period, and the asking price;
- Details of the level of interest generated and any offers received;
- What consultation there has been with local community groups / service providers on possible alternative community uses.

In considering proposals that would result in the loss of local community facilities, consideration will be given to what other facilities and services are available locally, and whether there are proposals to consolidate that service into a community facility hub. Where proposals relate to the conversion of shops or other bespoke premises, the retention of elements which would allow a range of future uses, such as shop front features and separate upper floor access, should be considered where practicable.

Viability of the business

No details have been provided of when the restaurant use formally ceased but information from Le Petit Canard website suggest that the restaurant did not formally reopen after the last lockdown and has only been available for food collection since that time on two days per week. This would suggest that the restaurant closed in April 2021 more than 12months ago.

Whilst the agent has spoken broadly of the impacts of Covid on the economy there is no evidence to suggest that the restaurant business was not viable and was not or could not be profitable. The applicant's main case is that they wish to close the business but retain their family home. As such this suggests it is more of a personal choice than due to the viability of the business.

Marketing

The premises has not been formally marketed but an opinion gained from a local estate agent suggests that due to the constrained location of the site and as there are other restaurants in the area the premises is unlikely to gain any reasonable offers or interest. However, this has not been sufficiently tested with a formal marketing campaign. Whilst a list of other uses in the area have been provided alternative uses for the premises have not been explored or community groups consulted.

Local need

The agent has argued that there is no local need for the use and that the area is well provided for in terms of restaurants and cafes. A list of local restaurants and cafes has been provided as evidence. These include 'The Chalk and Cheese pub, 'Newsagent 64 and café, 'Riverside take-away' Spar shop' and 'The Village Stores'. The other two business listed are mobile catering trucks which visit the village periodically. Although this list provides evidence of other similar uses in the area these are all long established businesses within the village that have traded alongside one another and survived. As such this does not suggest that a small restaurant is no longer required or viable.

Alternative community uses

The preamble to policy COM3 also states that "opportunities for conversion to alternative community uses have been explored." Again, the agent has provided details of other community uses in the area such as the Village hall, Youth and Community Centre and the Cheese and Chalk function room. Whilst this indicates there are other facilities in the area it does not necessarily follow that other spaces are not required. The agent has cited that due to the domestic size of the space it would not be lend itself to meetings or activities, however, as no consultation with local community groups has been carried out this cannot be proven. It may be that a

smaller more intimate space might be suitable for some types of groups or meetings. Furthermore, due to the sustainable location of the premises, as the village benefits from a bus stop and a train station, potentially a wider area than just the village could be served. It is therefore considered that it would be unsustainable and place greater reliance on travel to alternative locations for facilities if this use was lost.

As such from the evidence submitted it cannot be concluded that a viable business could not continue at this premises.

Character and appearance of the Conservation Area

The proposed alterations to the building would be minimal. Notwithstanding that, whilst the façade of the building would be retained there would be some impact on the Conservation Area, with the visual interest and vitality of the restaurant and its presence lost. Although this is unfortunate and reinforces the importance of the business in the village the proposed development would not result in any physical or visible alterations from the street scene and the proposal is therefore not considered to cause harm to the Conservation area.

Amenity

With consideration of residential amenity, there is an existing residential property at first floor and the proposal is to extend this residential use over the two floors. The existing property has a small rear garden. Although the residential area would be increasing, the proposed removal of the existing store would also result in a larger rear garden benefitting the amenity of any future occupiers. As the residential use already exists and there are no significant external alterations to the building there is not considered to be any additional overlooking or overbearing impact and as such no additional impact on residential amenity.

Access and Parking

The proposal would not lead to additional parking needs or endanger road users.

Nutrient Neutrality

The site falls within the Poole Harbour catchment area. Currently there is an existing flat on the first floor and the proposal would be to extend this residential use over both floors resulting in the loss of the ground floor restaurant. As no additional residential units are being created it is not necessary for the applicant to demonstrate nutrient neutrality.

Comments from Third Parties

The building falls within Class E which includes retail, sale of food and drink for consumption (mostly) on the premises, financial services, medical services, sports facilities etc. As such the premises could have changed to a number of different uses without the need for planning permission. The closest neighbours live next to a café/restaurant and must be aware that the premises could have changed hands any number of times during the 20 years Le Petit Canard has been there. If the premises was taken over by another café restaurant and new equipment installed or further equipment required this may require planning permission and as such the planning department would maintain some control. If however planning permission was not

required Environmental Health would be able to monitor the impact and take action if needs be.

16.0 Conclusion

In the absence of any definitive or conclusive information that a restaurant business could not continue as a viable business or that a suitable alternative community facility is not required/viable the proposed development is contrary to Local Plan Policy COM3 which seeks to retain village community facilities. The change of use of the restaurant would place greater reliance on travel to alternative locations for facilities and would devoid the village of an important community facility.

17.0 Recommendation

Refuse for the following reason:

The proposal would lead to loss of a community facility (a restaurant) in a sustainable location. The Local Planning Authority is not satisfied from the information provided that this village facility could not continue as a viable concern furthermore it has not been demonstrated that there is no alternative community use for the premises. The loss of the facility would place greater reliance on travel to alternative locations for facilities. The proposed change of use is therefore contrary to Policy COM3 of the West Dorset, Weymouth and Portland Local Plan 2015 which seeks to retain village community facilities.