

MC/12/0418

Date Received: 15 February, 2012

Location: 210 Maidstone Road, Rochester, Kent ME1 3LP

Proposal: Variation of condition 2 of planning consent MC/09/0503 (Change of use from A1 (retail) unit into Class A5 hot food takeaway pizza shop with home delivery together with a first floor 1 bed flat for staff/manager above) to allow the shop to be open on bank holidays (excluding Christmas Day, Boxing Day, New Years Day and all Sundays) The hours of operation are to remain the same with no extension.

Applicant: Maidstone Road Fish Bar

Agent:  
Ward Rochester West

---

**Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 9 May, 2012.**

**Recommendation - Approval with Conditions**

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

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

Site Location Plan and drawing number(s) 09.02.02 & 02E received 23 December 2009 and 09.02.02/3, received 15 February 2012.

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

- 3 The use hereby permitted shall only be open to customers between the hours of 11:30 and 22:00 Mondays to Saturdays inclusive, including Bank Holidays (excluding Christmas Day, Boxing Day and New Years Day) and not at all on Sundays.

Reason: To regulate and control the permitted development in the interests of amenity in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 4 The scheme for the extraction and treatment of cooking fumes, which includes details for the control of noise and vibration from the system, shall be carried out as approved under MC/10/0116 as details pursuant to condition 3 of MC/09/0503, and hereafter permanently maintained.

Reason: To ensure that the development does not prejudice the amenities of neighbouring property in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 5 The scheme to minimise the transmission of noise from the takeaway to the flat above shall be carried out as approved under MC/10/0116, details pursuant to condition 4 of MC/09/0503. All works forming part of the approved scheme shall be completed before any part of the development hereby permitted is occupied and thereafter permanently maintained.

Reason: To ensure that the development does not prejudice the amenities of neighbouring property in accordance with Policy BNE2 of the Medway Local Plan, 2003.

- 6 No goods shall be loaded, unloaded, stored or otherwise handled and no vehicles shall arrive or depart, within the application outside the hours 07:00 to 19:00 Monday to Friday, 08:00 to 18:00 Saturday or at any time on Sunday or Bank Holidays.

Reason: To ensure that the development does not prejudice the amenities of neighbouring property in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 7 During the opening hours of the take away hereby approved, waste bins shall be provided immediately outside the premises, for use by customers. Such bins shall be placed within the building when the premises are closed.

Reason To provide appropriate refuse receptacles for customers in the interests of amenity.

**For the reasons for this recommendation for approval please see Planning appraisal section and conclusions at the end of this report.**

### **Proposal**

The application seeks variation of condition 2 of planning consent MC/09/0503 and MC/09/2759 (Change of use from A1 (retail) unit into Class A5 hot food takeaway pizza shop with home delivery together with a first floor 1 bed flat for staff/manager above) to allow the shop to be open on bank holidays (excluding Christmas Day, Boxing Day, New Years Day and all Sundays). The actual hours of operation will not change from those approved under MC/09/2759.

## Relevant Planning History

- MC/10/0116 Details pursuant to conditions 03 & 04 on planning permission MC2009/0503 & Appeal Decision APP/A2280/A/09/2107114 for Change of use from A1 (retail) unit into Class A5 hot food takeaway pizza shop with home delivery together with a first floor 1 bed flat for staff/manager above  
Discharge of Conditions 25 January, 2010
- MC/10/2598 Construction of a part two/part single storey attached building for use as food outlet (Class A5) on ground floor and a one bed roomed flat at first floor level and for the relocation of the existing flue from the side to the rear  
Refused 1 October 2010  
Appeal Dismissed 22 June, 2011
- MC/10/0741 Installation of a new shop front and roller shutters  
Approved 15 July, 2010
- MC/09/0239 Relocation of existing flue from side to rear and construction of a part two part single storey attached building for use as food outlet (Class A3) on ground floor and a one bed roomed flat at first floor level  
Refused 5 June, 2009
- MC/09/2758 Construction of a single storey extension with engineering works to create lower ground stairs; insertion of door within first floor elevation with access stairs to first floor flat; installation of flue; bin storage enclosure; formation of hardstanding to create parking; all works to rear (demolition of existing rear extension/fencing)  
Approved 11 March, 2010
- MC/09/2759 Variation of condition 2 of planning consent MC2009/0503 to enable A5 premises to open from 11:30 - 22:00 Monday to Saturdays  
Approved 11 March, 2010
- MC/09/2760 Advertisement consent for the installation of an internally illuminated fascia sign.  
Approved 11 March, 2010
- MC/09/0503 Change of use from A1 (retail) unit into Class A5 hot food takeaway pizza shop with home delivery together with a first floor 1 bed flat for staff/manager above  
Refused 15 June, 2009  
Appeal allowed

## **Representations**

The application has been advertised on site and by individual neighbour notification to the owners and occupiers of neighbouring properties.

**10 letters** have been received raising the following objections:

- Objection to change of use. The current fish and chip shop causes litter and smells and continuous traffic and noise problems, not to mention difficulties for parking. Grateful for the break on bank holidays and Sundays, when the road is much quieter.
- Initial granting of consent by the Council recognised that the premises should be shut on bank holidays and Sundays. The original condition was placed on the decision notice to mitigate against impact on residents.
- Bank holidays and Sundays are the only days that residents can get away from the smell.
- Two schools very close to the shop, whose pupils are encouraged to eat healthily rather than indulging in fast food, which they will if it is easily accessible.
- Object to a pizza take-away. How many more take-aways do we need in Medway. Should we be granting applications like this in such close proximity to schools.
- Applicant gets deliveries as early as 4.15am, outside the conditioned hours.
- The presence of the chip shop results in antisocial behaviour, and opening on bank holidays will make this worse.
- The grassed area to the front is constantly being used as a pic-nick area.
- Smell of cooking fish and chips is revolting.
- Deliveries to the rear has caused damage to the access road, and has never been made good as a result of the properties renovations.

## **Development Plan**

The Development plan for the area comprises the South East Plan 2009 and the Medway Local Plan 2003. The policies referred to within these documents have been assessed against the National Planning Policy Framework, 2012 and are considered to conform.

## **Planning Appraisal**

### *Background and Matters of principle*

The acceptability of a take away use in this location has already been considered acceptable by the Planning Inspector at the appeal into application reference MC/09/0503. Condition 2 of the consent restricted the opening hours between 11.30 to 14.00 hours and between 16.00 and 22.00 hours on Mondays to Saturdays, with no opening allowed on Sundays and public holidays.

An application was then subsequently made to vary the condition to enable the unit to trade through from 11.30 to 22.00 hours Mondays to Saturdays with no opening on Sundays or Public Holidays. This was approved by the Planning Committee in March 2010 (reference MC/09/2759) as this alteration was not considered to result in an

impact above and beyond what is already experienced in the area. The hours of 14.00 to 16.00 were considered to be within quieter trading times and unlikely to make much of a difference to local and residential amenities.

This current application seeks approval to allow trading to take place on bank holidays, but excluding Christmas Day, Boxing Day, New Years Day and all Sundays. The hours of operation are to remain the same as those approved under MC/09/2759. The proposed change will result in the premises being open only an additional 5 days in the year (in a normal year of bank holidays).

As trade will only take place for an additional 5 days a year, which will not result in any other change to the original permitted use it is considered that the variation of condition is acceptable in principle under the provisions set out under Local Plan Policies R10 and R18 (iii).

#### *Design and appearance*

The proposed variation of condition will not result in any change to the external appearance of the application site and as such, no impact on the street scene and character of the area will result.

#### *Neighbour amenity*

The additional 5 days of opening will not result in an impact in terms of light, outlook or privacy for occupiers of neighbouring dwellings.

Representation to the application raises concerns relating to noise, litter, parking, anti-social behaviour and cooking smells as a result of the take away use and increase in opening hours. These concerns, amongst others, were raised during the processing of the application for the change of use (MC2009/0503), which was granted consent at appeal. Consideration here should only concentrate on whether the additional 5 days of opening will exacerbate a problem, which is already experienced by residents of the area.

It is noted that the Inspectors Decision in relation to MC/09/0503 advised that the condition imposing hours of opening reflects the closing times of the adjacent Kent Mart, but which precludes any opening on Sundays given the residential nature of surrounding development. The variation of condition will allow for the Unit to remain open on bank holidays. However, this will not include Christmas Day, Boxing Day or New Years Day and the premises will remain closed on Sundays. Overall, therefore, the additional 5 days of opening is not likely to result in increased impact above and beyond what is already experienced in the area, or result in an unacceptable increase in noise and fume problems.

Accordingly the proposal is considered acceptable in terms of amenity considerations and is in accordance with the relevant provisions of policy BNE2 of the Medway Local Plan 2003.

### *Traffic generation and parking*

It is not considered that the additional 5 days of opening will impact on highway safety and parking and no objection is raised in this regard.

Accordingly no objection is raised to the proposal in terms of impacts on the highway and the relevant provisions of policy T4 of the South East Plan 2009 and policies T1 and T13 of the Medway Local Plan 2003.

### *Local Finance Considerations and Other Matters*

There are no local finance considerations regarding this application

The matter relating to early morning deliveries is being dealt with by the Council's Enforcement team and is not related to this current application.

### **Conclusions and Reasons for this Recommendation**

Overall, the variation of condition will only amount to an increase in 5 days of opening, which is unlikely to result in increased impact on neighbouring amenity by way of noise and traffic disturbance. The concerns raised with regard to litter, anti-social behaviour and increased use by school children were considered in detail during the processing of the previous application. The additional opening days are not considered to exacerbate the problem above and beyond what is already experienced. The application is therefore in accordance with the above mentioned Development Plan policies and is recommended for approval.

The application would normally fall under Officer's delegated powers of determination, but is being reported for Members' consideration due to the extent of the representations received expressing views contrary to the recommendation.

---

### **Background Papers**

The relevant background papers relating to this planning application comprises: the application and all supporting documentation submitted therewith; and items identified in any Relevant History and Information section and Representatives section within the report.

Any information referred to is available for inspection in the Planning Offices of the Council at Gun Wharf, Dock Road, Chatham.