

MC/14/2766

Date Received: 17 September, 2014

Location: 49 Peveler Green, Parkwood, Gillingham, ME8 9UH

Proposal: Variation of condition 3 on planning permission MC/10/4574 to extend the operating hours to 10:00 hours - 22:00 hours Monday to Saturday and 11:00 hours - 20:00 hours on Sunday and National / Bank Holidays

Applicant: Mr Soran

Agent: Mr Ogel Ogel Architecture 36A Berriman Road London N7 7PS

Ward Rainham South

Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 5 November 2014.

Recommendation - Refusal

- 1 The increased hours of opening would have the potential to harm neighbour amenity through additional noise and disturbance caused by patrons of the take away. The application is not in accordance with the provisions of Policy BNE2 of the Medway Local Plan 2003.

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

Proposal

Variation of condition 3 on planning permission MC/10/4574 to extend the operating hours to 10:00 hours - 22:00 hours Monday to Saturday and 11:00 hours - 20:00 hours on Sunday and National / Bank Holidays.

The variation amounts to an additional hour on weekday and Saturday evenings and an additional hour on Sunday and Bank/Public Holiday evenings.

Relevant Planning History

- Case ref:**MC/14/1618 Variation of condition 4 of MC/10/4574 to extend operating hours to 10:00 hours - 23:00 hours Monday to Saturday and 11:00 hours - 22:00 hours on Sunday and National / Bank Holidays
- Decision Refusal**
Decided 17 July, 2014
- MC/10/4574 Change of use from retail (Class A1) to hot food take-away (Class A5)
Decision Approval With Conditions
Decided 2 June, 2011
- MC/10/0025 Change of use from retail (Class A1) to hot food take-away (Class A5) use
Decision Refusal
Decided 5 July, 2010
- MC/09/0024 Change of use from retail (Class A1) to hot food takeaway (Class A5) (resubmission)
Decision Refusal
Decided 3 March, 2009
- MC/08/1913 Change of use from retail (Class A1) to restaurant (Class A3)
Decision Withdrawn by applicant
Decided 10 December, 2008

Representations

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

Ten letters from nine households relating to:

- Residential area and late opening will attract youths with consequential anti-social behavior;
- Litter has become a chronic problem and the related risks to public health from discarded food waste;
- No requirement for opening on a Sunday, none of the other takeaway are open in the area;
- Quality of life would be affected - Quality of life is protected under Part 2 of the First Protocol, Article 1 of the Human Rights Act, 1998;
- Mockery of the system if the hours can be bypassed by another application after the original is granted with conditions;
- Area peaceful at night but will change if the hours are extended
- Cooking smells
- Traffic and parking is a huge issue

- Extended hours will cause distress
- The shop is trading past its hours at the moment
- Restrict the use of the rear garden due to cooking smells
- Poor acoustic fingerprint and a major problem with sound reverberation, resulting in noise being amplified to a point where local residents cannot sleep with their bedroom windows open during the summer months if there is any disturbance on the green.
- Elderly residents feel intimidated by the disturbance

Six letters of support from four households making the following points:

- Customers are currently disappointed that they cannot buy hot food later
- Unfair as other businesses have later opening hours
- Can buy hot food within walking distance of home

Councillor Doe has written with the following:-

I am very disappointed if we have received yet another application from this business and, if we have, can you ensure the Planning Committee knows that I strenuously object to any extension of hours in such a tight knit residential area. These shops were originally intended as convenience shops for local people and should not be trying to bring people in from much further a field at times, which will materially harm the 'quiet enjoyment' of local residents.

Development Plan

The Development plan for the area comprises the Medway Local Plan 2003. The policies referred to within these documents and used in the processing of this application have been assessed against the National Planning Policy Framework, 2012 and are considered to conform.

Planning Appraisal

Background

Planning permission was granted in June 2011 for change of use of the property from retail (Class A1) to a hot food take-away (Class A5) and a condition was imposed to restrict the hours as follows:-

"The use hereby permitted shall only operate between the hours of 10:00 to 21:00 Mondays to Saturdays inclusive and between the hours of 11:00 to 19:00 on Sundays and Public Holidays unless otherwise agreed in writing by the Local Planning Authority.

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

The original application sought opening hours of 10:00 to 22:00 everyday, including Sundays and Public Holidays, however following a site meeting and subsequent committee presentation the hours were reduced on the basis that the premises is located in a residential area.

An application (MC/14/1618) was submitted and refused at committee in July 2014 to change the hours to 10:00 - 23:00 Monday to Saturday and 11:00 - 22:00 on Sunday and National Bank Holidays for the following reason:

The increased hours of opening would have the potential to harm neighbour amenity through additional noise and disturbance caused by patrons of the take away. The application is not in accordance with the provisions of policy BNE2 of the Medway Local Plan 2003.

The current application seeks to extend the operating hours to 10:00 hours - 22:00 hours Monday to Saturday and 11:00 hours - 20:00 hours on Sunday and National / Bank Holidays.

Neighbour Amenity

Hot food takeaway outlets have the potential to have a significant impact in terms of harm to neighbouring residential amenity including litter, noise and late night disturbance.

The shop is one of a block of two, which are very close to residential properties. The noise from the plant and equipment used at the shop has not given rise to any recorded noise complaints. However, the other source of noise is from patrons in and around the shop premise in an otherwise quiet location.

The National Planning Practice Guidance (PPG) that was issued by the Government in March this year, to support the National Planning Policy Framework (NPPF), has a PPG related to noise that states "*Noise needs to be considered when new developments may create additional noise and when new developments would be sensitive to the prevailing acoustic environment...*" (PPG Noise paragraph '002 Reference ID: 30-002-20140306)

In regard to the specific site circumstances of this proposal, the primary way to control noise generated within the premises is by way of condition limiting the hours of operation. It is considered that the development has the potential to result in a deterioration in the amenity of the neighbourhood from increased noise from patrons the hours of use.

The Governments PPG on Noise states "*Some commercial developments including fast food restaurants, night clubs and public houses can have particular impacts, not least because activities are often at their peak in the evening and late at night. Local planning authorities will wish to bear in mind not only the noise that is generated within the premises but also the noise that may be made by customers in the vicinity*" (PPG Noise paragraph '007 Reference ID: 30-007-20140306). Furthermore this advice also states that

where noise has the potential to cause a material change in behaviour and/or attitude (e.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep) then the quality of life is diminished due to change in acoustic character of the area. Where such situations have the potential to occur this is referred to as a 'significant observed effect' and the Government's PPG on noise advises that such developments should be avoided. (PPG Noise paragraph '002 Reference ID: 30-002-20140306).

In this instance, it is considered that the extended hours of use proposed are likely to result in a 'significant observed effect' to the detriment of the amenities of neighbouring occupiers by virtue of patrons coming and going from the premises, cars arriving and departing, vehicle engines running / radios playing, vehicle doors opening and shutting, etc., in this relatively quiet location. On this basis and bearing in mind the Government PPG on noise and the fact that the proposed development would be contrary to the objectives of policy BNE2 of the Medway Local Plan 2003 this application to vary condition 3 of MC/10/4574 is recommended for refusal, as the extended hours of use proposed are likely to result in an adverse impact on the amenities of neighbouring occupiers

Local Finance Considerations

Not relevant.

Conclusions and Reasons for Recommendation

The proposed change in the hours of operation are not considered to be acceptable and would have the potential to harm neighbouring amenity contrary to the provisions of policy BNE2 of the Medway Local Plan 2003.

The application would normally fall to be determined under delegated powers but has been referred to Committee due to the number of letters that have been received in support of the application contrary to officer recommendations.

Background Papers

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://publicaccess.medway.gov.uk/online-applications/>