

MC/15/0381

Date Received: 9 February, 2015

Location: 7 Canterbury Street, Gillingham, ME7 5TP

Proposal: Change of use from A3 to A3/A5 with extended trading hours

Applicant: Mr Hijratulla

Agent: Mr Gibson P A Gibson Design and Draughting 131 Trafalgar Street Gillingham Kent ME7 4RP

Ward Gillingham South

Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 29 April, 2015.

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:OK-1596-001, block plan and OS plan received on 6 February 2015.

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

- 3 The use hereby permitted shall only operate between the hours of 11:00 to 00:00 Sunday to Wednesday including Public Holidays, between the hours of 11:00 to 00:30 on Thursdays and between the hours of 11:00 to 01:00 on Friday and Saturday.

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 existing smoking shelter to the rear of the premises shall be used for the purposes of storage ancillary to the use of the restaurant/take away only and members of the public shall not access it at any time.

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

For the reasons for this recommendation for approval please see Planning Appraisal Section and Conclusions at the end of this report.

Proposal

This application is for the Change of use from A3 to a mixed use A3/A5 with extended trading hours.

No.7 is currently occupied as a café (Class A3), and advertised as open 09:00 to 23:00 Monday to Saturday and 18:00 to 23:00 Sundays and Bank Holidays.

It is proposed to increase the opening times to Sunday – Tuesday 15:00 to 02:00, Wednesdays 15:00 to 03:00 and Thursday to Saturday 15:00 to 04:00.

There is currently a Shisha smoking shelter to the rear comprising of a large structure. It is proposed that this will be used for storage only and not as a smoking shelter.

Relevant Planning History

7 Canterbury Street

MC/11/2055 Retrospective change of use to a cafe (Class A3); installation of a new shop front and roller shutter and construction of a new smoking shelter to rear
Approval With Conditions, 7 December, 2011

MC/11/1102 Part retrospective application for new shopfront; roller shutter & detached smoking shelter to rear for the smoking of shisha tobacco.
Withdrawn by Applicant 22 June, 2011

MC/02/2463 Construction of a pitched roof and additions and alterations to fenestration in connection with creating additional living accommodation at second floor level to 7 & 9 Canterbury Street, Gillingham
Approved 3 February 2003

9 Canterbury Street

MC/12/1349 Change of use from retail (Class A1) to hot food take-away (Class A5) and installation of an extraction flue to rear
Refused 3 August 2012

Representations

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

1 letter of objection has been received raising concerns relating to:

- Road Safety
- Noise Pollution
- Anti Social Behaviour
- No.7 is opposite Bliss nightclub and will prevent the nightclub from dispersing their customers. Instead of walking away from the venue to get fast food they will be met with it directly opposite causing a bottle neck and excessive noise and a concern of late night anti-social behaviour

A petition with 328 signatures has been received in support of the application

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

Principle

This application relates to a mid terrace commercial unit on the western side of Canterbury Street. The area is situated within the designated core retailing area of Gillingham Town Centre, covered by policies R5 and R17.

Policy R5 states that within the core area; use classes A1, A2 and A3 will be permitted, providing they support the viability and vitality of the centre as a whole. Please note that use class A3 has been split into A3 (Restaurant/cafe), A4 (Drinking Establishments) and A5 (Hot Food Takeaways) since the writing of the Local Plan.

Policy R17 permits changes of use to Class A3 (food and drink uses) except where the addition of such a use within any particular part of the centre would cumulatively have a detrimental effect on the character and retail function of the centre or visual amenity.

The site is approx. 450m from Brompton Academy to the west and while it is within the Town Centre, is in close proximity to residential properties.

Medway Council's Cabinet agreed on 15 July 2014 to adopt new guidance '*Hot Food Takeaways in Medway: A Guidance Note*' as a material consideration in relation to determining applications for new hot food takeaways. The guidance introduced some restrictions on the location and operating hours of new takeaways. This targets the issues of over-concentration of takeaways in particular areas, and in locations close

to schools. The guidance covers planning applications for new takeaways only.

In all cases where the property is situated within 400m of a school, A5 uses will be subject to restricted opening hours enforced through an appropriate condition. This will ensure that outlets are not open during school lunchtimes and for a period after school, so as to contribute towards healthier lifestyles for younger people in particular. It does not apply to existing businesses.

The hours sought for this application are Sunday – Tuesday 15:00 to 02:00, Wednesdays 15:00 to 03:00 and Thursday to Saturday 15:00 to 04:00. The current opening hours of the A3 café are 09:00 to 23:00 Monday to Saturday and 18:00 to 23:00 Sundays and Bank Holidays. While the evening hours are significantly longer the daytime hours are shorter on Monday to Saturday and are only sought to be longer on Sundays and Bank Holidays, in addition to this it is considered that the site is outside the critical 400m and as such it is not considered that this part of the guidance is relevant. The longer opening hours will be considered in the amenity section of this report.

In addition to the Hot Food Takeaways Guidance Note, Policies R5 and R17 of the Medway Local Plan 2003 seek to secure a balance of shops and services in Town Centres. Whilst hot food takeaways contribute to the mix of centres, it is important that they do not dominate the local retail food offer in the area. An over abundance of hot food takeaways displaces other shop and food options and impacts on the vitality and viability of centres. Because of this some communities in Medway have a limited choice of and access to fresh, nutritious food. The clustering of hot food takeaways breaks up the continuity of the retail frontage and can detract from the primary retail function resulting in the loss of shops, which is to the detriment of local residents and the vitality and viability of the centre as a whole.

It is important to consider the possible impact of new takeaways in the centre as part of an assessment of the vitality and viability of the centre as a whole. In doing so an assessment is made to determine the proportion of each main frontage in terms of each centre use class (A1, etc). This will normally be expressed in linear metres converted to an overall percentage; A1 should normally account for at least 60% of the total. A5 uses should not normally exceed 10%.

An existing linear frontage survey was carried out in the area between Skinner Street (at the junction with Jeffery Street) and Canterbury Street (to the junction with Lock Street :-

Use Class	Existing Linear Frontage (m)	Existing %	Proposed Linear Frontage (m)	Proposed %
A1	102	33.9	102	33.9
A2	29	9.7	29	9.7
A3	31	10.3	27	9
A4	25	8.3	25	8.3
A5	9	3	13	4.3
B1	9	3	9	3
B2	12	4	9	4

D1	40	13.2	40	13.2
D2	20	6.7	20	6.7
Sui Generis	8	2.6	8	2.6
Residential	16	5.3	16	5.3

The proposal would result in the unit changing from A3 to a mixed use A3/A5. The change of use would result in an increase of A5 uses to 4.3% (if taking the unit to be pure A5 despite the fact that it would be a mixed use). This is far below the 10% threshold to comply with the objectives of the Hot Food Takeaways in Medway: A Guidance Note. There would be no reduction in A1 retail floorspace, which would remain at 33.9% and while this is below the recommended 60% threshold this is not affected by the change of use of this unit.

It is considered that the proposal would not result in a detrimental impact on the retail vitality of the Centre. On this basis, the proposed change of use is considered to be in accordance with Policies R5 and R17 of the Medway Local Plan 2003 and the Hot Food Takeaway in Medway: A Guidance Note, 2014.

Design

There are no changes to the unit proposed and as such there are no objections under policy BNE1 of the Medway Local Plan.

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 set within a high street location with residential units above the shops and flats to the rear and at the St Marks House sheltered housing complex.

The National Planning Practice Guidance (PPG) that supports 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 due to the extended hours of use. The café use currently operates from 09:00 to 23:00 Monday to Saturday and 18:00 to 23:00 Sundays and Bank Holidays and it is proposed to increase the opening times to Sunday – Tuesday 15:00 to 02:00, Wednesdays 15:00 to 03:00 and Thursday to Saturday 15:00 to 04:00.

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 diminished due to a change in the 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 amenities of neighbouring occupiers by virtue of patrons coming and going from the premises, and congregating outside together with the potential for cars arriving and departing, vehicle engines running / radios playing, vehicle doors opening and shutting, etc. On the basis it is recommended that the change of use is approved with restricted opening hours:

Sun to Wednesday: 11:00-00:00

Thursday 11:00-00:30

Friday and Sat 11:00-01:00

It is acknowledged that 9 Canterbury Street was refused in 2012 (MC/12/1349) due to the cumulative number of A3 and A5 uses in the area, which would cause noise and disturbance to the surrounding residents. It is considered that this application differs to that by virtue of the fact that 9 Canterbury street is a retail use (A1 use) which has limited opening hours, compared to 7 Canterbury Street which already operates as a café (A3 use) with hours extending late into the night.

The application seeks to use the existing smoking shelter at the rear of the premises for storage, which would reduce the noise emanating from the rear yard towards the residential properties to the west.

In amenity terms the proposal, subject to the recommended conditions, is acceptable and complies with policy BNE2 of the Medway Local Plan.

Highways

The site has no dedicated parking, and there is no kerbside parking in the vicinity. However, this site is within the town centre and is easily accessible by non-car modes. It is possible that some indiscriminate parking may occur, but this is unlikely to have a significant impact on traffic flow or safety. The parking controls in place along this section of Canterbury Street can be subject to enforcement by the appropriate authorities. As such no objection is raised with regard to the transport policies in the Local Plan.

Conclusions and Reasons for this Recommendation

In the light of the above, the proposed change of use from café (A3) to a mixed-use café (A3) and hot food takeaway (A5) meets the criteria for such a proposal in a High Street location in accordance with Policies R5 and R17 of the Medway Local Plan 2003. It would not lead to an unacceptable impact upon neighbouring amenities through increased noise and disturbance or highway safety hazards and therefore, subject to the imposition of appropriate conditions as set out above, the development is considered in accordance with Policies BNE1, BNE2, R5, R17, T1, or T13 of the Medway Local Plan 2003.

This proposal would normally fall to be determined under delegated powers but is being reported to Planning Committee for determination at the request of Cllr Mrs Chambers who considers that the issue of opening hours and impact on residential amenity is most appropriately considered by Planning Committee.

See Draft Decision Notice

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/>