

MC/16/4952

Date Received: 8 December, 2016

Location: 148 High Street Rochester ME1 1ER

Proposal: Variation of condition 4 of planning consent ME/98/0545/MR - (Change of use of ground floor from Part Class A1) Retail/Part (Class A3) Food and drink use to wholly A3 use) to allow the business to operate between the hours of 09:00 to 23:00 Sunday to Wednesday and 09:00 to 01:00 Thursday to Saturday

Applicant: Mr Amirthalingam Nallaiya

Ward Rochester West

Case Officer Mary Smith

Contact Number 01634 331700

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**Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 15 February 2017.**

### **Recommendation - Approval with Conditions**

- 1 The use hereby permitted shall only operate between the hours of 09:00 to 23:00 Sundays to Thursdays (inclusive) and Public Holidays and between the hours of 09:00 to 00:00 on Fridays and Saturdays.

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

**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 variation of condition 4 of planning permission ME/98/0545/MR (change of use of ground floor from part Class A1 retail/part Class A3 food and drink use to wholly Class A3 use) to allow the business to operate between the hours of 09:00 to 23:00 Sunday to Wednesday and 09:00 to 01:00 Thursday to Saturday. The applicant has provided details of other food and drink establishments in the High Street which are also open until these times or later. He also says that he would employ security guards between 11pm to 1am to avoid antisocial behaviour and noise intensification and to stop people loitering there, with notices and CCTV to assist in this. He also says that he would provide additional seating and freebie offers to encourage customers to eat inside.

## Relevant Planning History

MC/15/0856	Details pursuant to conditions 3 and 4 of listed building consent MC/14/1394 - Listed Building Consent for the installation of new flue systems both internally and externally Decision Discharge of Conditions Decided 8 May, 2015
MC/14/1393	Installation of new flue systems both internally and externally Decision Approval With Conditions Decided 27 January, 2015
MC/14/1394	Listed Building Consent for the installation of new flue systems both internally and externally Decision Approval With Conditions Decided 27 January, 2015
MC/12/2019	Variation of condition 4 on planning permission ME/98/0545/MR (Change of use of ground floor from part (class A1) retail/part (class A3) food and drink use to wholly class A3 use) to allow the business to operate between the hours of 09.00 - 00.00 on Mondays to Sundays inclusive Decision Refusal Decided 5 December, 2012
MC/11/2681	Variation of condition 4 of planning consent ME/98/0545/MR - (Change of use of ground floor from Part Class A1) Retail/Part (Class A3) Food and drink use to wholly A3 use) to allow the business to operate between the hours of 09.00 -00.30 on Mondays, Tuesdays, Wednesdays and Sundays, 02:00am on Thursdays and 03.00am on Fridays and Saturdays Refused 15 December, 2011 Appeal Dismissed 23 May, 2012
MC/03/0786	Variation of condition (04) on planning permission 98/0545/MR to allow opening until 02.00hrs Refused 29 May, 2003
99/5484	Application for certificate of lawful use for proposed restaurant use Approved 10 April, 2000
98/0647	Variation of condition 2 to allow for the sale of hot food and drink to takeaway Approved 16 December, 1999
98/0545	Change of use of ground floor from part (class A1) retail/part (class A3) food and drink use to wholly class A3 use

Approved 9 December, 1998

75/700/L4

Change of use from restaurant to gift shop  
Approved 08 December, 1975

## **Representations**

The application has been advertised on site and by individual neighbour notification to the owners and occupiers of neighbouring properties. The Town Centre Manager and Kent Police have also been consulted.

**The Historic Rochester Residents Association** wishes to encourage enterprise on the High Street that doesn't affect the quality of life of local residents. Takeaway and budget food outlets can become a focus of night time trouble and the applicant seems well aware of this, stating that he has already put control measures in place and is ready to enhance those concerning noise, anti-social behaviour, litter, etc, the shop being much cleaner and apparently well run compared to its predecessor on the same site. Provided the Council are prepared to accept and monitor the conditions proposed by the applicant they have no objection to extended opening hours but suggest they should be restricted to 2359 on Thursdays and Fridays and 0030 on Saturdays.

**One letter** has been received raising the following objections:

- Anti-social behaviour attraction: noise, rubbish and use of alley as public toilet;
- Adverse impact on neighbours sleep.

**A petition of support** from 19 people (1 local group, 1 neighbour, 4 neighbours/regular customers and 13 regular customers) has been received including:

- Needs to be open later;
- No trouble;
- Let people work.

## **Development Plan**

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

## **Planning Appraisal**

### *Background*

At present the hours of operation of this mixed hot food takeaway and eat-in unit (a mixed use of A3/A5) are controlled by condition 4 of planning permission ME/98/0545/MR. This says that the use shall only operate between the hours of 09.00 and 23.00 on any day, the reason being to ensure that the development is without prejudice to conditions of amenity. Various applications to extend these

hours of opening have been made as detailed above, all having been refused (including a dismissed appeal) due to concern regarding harm to the living conditions of nearby residential properties.

### *Principle*

There is no objection in principle to a variation to the hours of opening of this A3/A5 use; the main issue is the impact of this on amenity.

### *Amenity*

The current application seeks to extend the permitted hours on Thursday, Friday and Saturday evenings to allow opening until 1am instead of the current 11pm. The site is located within the High Street where there is a mix of commercial and residential uses. There are flats above the units to either side of the site in addition to others on upper floors nearby and there are also houses and flats to the rear of the site along Eastgate Terrace and in Kings Mews. The High Street is typically a busy area for the late night economy with numerous pubs, clubs, restaurants and takeaways in the vicinity such that local residents might reasonably expect some disturbance. This disturbance is most likely to be experienced at the weekend and be an accepted feature of living in a busy High Street location.

The proposed variation in hours would result in increased opening after a time when most people would be expected to be in bed trying to sleep. Hot food takeaways tend to be a congregation point for people visiting on foot or in vehicles and if delivery services are provided there would also be additional movements of vehicles associated with this. In these circumstances it is considered that the proposed hours of opening would result in an unacceptable loss of amenity to local residents by reason of noise and disturbance.

However it is recognised that on Friday and Saturday nights the High Street is generally busier and as such local residents might reasonably expect there to be a greater degree of noise and disturbance into the late evening. This was noted by the Inspector at the appeal against the refusal of MC/11/2681. He accepted that the existing hours condition may be somewhat restrictive but found that the proposal at that time (to open until 3am on Friday and Saturday nights) did not strike an acceptable compromise between commercial objectives and the need to protect local residents from excessive noise and disturbance at unsociable hours. In the current case although the proposed opening until 1am is still not considered to be a suitable balance, it is considered that opening until midnight on Fridays and Saturdays only would strike an acceptable balance between the rights and expectations of local residents and those of a local business. A variation of hours to allow this change is therefore recommended, including with regard to the advice in Policy BNE2 of the Local Plan and the fourth core planning principle in paragraph 17 of the NPPF.

### *Highways*

It is not considered that the proposed variation of hours of opening would result in any significant highway impacts and no objection is raised with regard to Policies T1 and T13 of the Local Plan.

### *Local Finance Considerations*

No considered relevant.

### **Conclusions and Reasons for Approval**

Whilst it is considered that opening until 1am on Thursday to Saturday evenings would be harmful to the amenities of local residents it is considered that opening for an extra hour until midnight on Friday and Saturday evenings would not be harmful bearing in mind the general increase in activity at weekends. Permission for a variation to allow this is therefore recommended with regard to Policy BNE2 of the Local Plan and the advice in the NPPF.

The application would normally be determined under delegated powers but is being referred to the Planning Committee for determination due to the extent of the representation received expressing views contrary to the recommendation.

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### **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/>