

MC/17/4383

Date Received: 20 December, 2017

Location: 158 Canterbury Street, Gillingham, ME7 5UB

Proposal: Change of use from A3 to A3/A5 to include takeaway

Applicant: Mr Has

Ward Gillingham South

Case Officer Alison Webster

Contact Number 01634 331700

Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 14 March 2018.

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:

Existing ground floor plan received 20 December 2017.

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

- 3 No development shall take place until a scheme for the extraction and treatment of cooking fumes, including details for the control of noise and vibration from the system, has been submitted to and approved in writing by the Local Planning Authority. Noise from the extraction system (LAeq,T) shall be at least 10dB(A) below the background noise level (LA90,T) at the nearest residential facade, when assessed in accordance with BS4142:2014. The approved scheme shall be implemented before the development is brought into use and thereafter be maintained in accordance with the approved details.

Reason: To safeguard conditions of amenity in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 4 The use hereby permitted shall only operate between the hours of 08:00 to 23:00.

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 change of use from A3 to a mixed use A3/A5 to include takeaway.

No.158 is currently empty and has been for roughly one year. Prior to this the site was in use as a cafe (use class A3).

There is an existing garden area to the rear.

Relevant Planning History

The only relevant planning history on the site is a removal of a condition to allow for a takeaway facility (90/0440/80/271). This was approved on 20 September 1990.

Representations

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

3 letters of objection have been received raising concerns relating to:

- The opening hours are much longer than the café before
- No parking for the site
- Anti Social Behaviour
- Cooking smells
- Loss of amenity to surrounding residents from the use of the rear garden
- There is no lack of tenants for A1 use

A petition with 7 signatures has been received objecting to the application raising concerns relating to:

- Smells from the previous use ceased by 6pm
- There are two takeaways nearby open until 3am.
- Parking pressure
- Increase in noise due to increased opening hours and use of garden to rear
- The extractor point towards the properties at Nile Road
- Litter
- There are four takeaways around the junction of Canterbury Street/Rock Avenue (170-140m away)

- A further 16 are listed up to and including 600m away.

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 northern side of Canterbury Street. The area is situated within a neighbourhood centre, covered by Policy R10 of the Local Plan. Policy R18 is also relevant as is the guidance '*Hot Food Takeaways in Medway: A Guidance Note*' which introduced some restrictions on the location and operating hours of new takeaways. This guidance 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 is to 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. The application site is however, not within 400m of a school site. The hours of operation are considered in the amenity section below.

The proposal would result in the unit changing from A3 to a mixed use A3/A5. This parade of shops contains residential units, a hairdressers, bridal shop and taxi business. The proposal would not result in any loss of any A1 use but instead increase the scope of the existing A3. There are no other hot food takeaways in this parade of shops and therefore it is not considered the proposal to add A5 to the existing A3 use would result in a concentration of A5 uses that would be detrimental to the functioning of this neighbourhood centre. The refuse and parking arrangements for the current A3 use would not change and would adequately cater for the introduction of the A5 element. It is not considered that adding an A5 use to the unit would significantly intensify the amount of refuse or amount of vehicles visiting the site.

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 R10 and R18 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 Local Plan and paragraph 56 of the NPPF.

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 application site is set within a parade of shops with residential units above and houses opposite and to the rear.

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).

It also 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 says 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).

With regard to the specific site circumstances of this proposal, the main issue is 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 an impact on the amenity of the neighbourhood from increased noise from patrons due to the extended hours of use. The café use previously operated from 09:00 to 23:00 Monday to Saturday and 18:00 to 23:00 Sundays and Public Holidays and it is proposed to increase the opening times by an hour between Monday to Saturday to 08:00 to 23:00 and increase the opening hours significantly during the day on Sundays and Public Holidays to 08:00 to 23:00 Sundays and Public Holidays. The proposed opening hours are considered acceptable as the increase would be during the day rather than later into the evening.

There have been no complaints received by the Council regarding the odour and noise from the previous diner use however, due to the extended opening hours a condition is recommended to ensure that a scheme of extraction and treatment of cooking fumes be submitted prior to the development being brought into use.

In amenity terms the proposal, subject to the recommended conditions, is acceptable and complies with Policy BNE2 of the Medway Local Plan and paragraph 17 of the NPPF.

Highways

The site has no dedicated parking, and there is no kerbside parking in the vicinity. However, this site is close to the town centre and is easily accessible by non-car modes of travel. It is possible that some indiscriminate parking may occur, but this is unlikely to have a significant impact on traffic flow or safety over and above the lawful A3 use. 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 Policy T1 of 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) accords with the objectives of Policies R10 and R18 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 paragraphs 17 and 56 of the NPPF and Policies BNE1, BNE2, R10, R18 and T1 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 due to the number of objections contrary to Officers' recommendation.

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/>