

MC/18/2514

Date Received: 23 August 2018

Location: 128-130 Delce Road, Rochester, Kent, ME1 2DT

Proposal: Change of use from retail (Class A1) to hot food takeaway/restaurant (Class A5/A3) together with external extraction flue and new shopfront.

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Ward: Rochester East Ward

Case Officer: Wendy Simpson

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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 21st November 2018.

Recommendation - Refusal

- 1 The proposal would result in harm to the living conditions of occupiers of 132a Delce Road by virtue of the close proximity of the proposed extract ducting flue to the rear bedroom window of 132a Delce Road. The flue would appear as a dominant and unattractive feature within the outlook from that bedroom window and its operation would result in noise disturbance to occupiers of the rear bedroom. The proposal is contrary to saved policies BNE2 and R18 of the Medway Local Plan 2003 and Paragraph 127 of the National Planning Policy Framework 2018.

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

Proposal

This application proposes the change of use and conversion of the property from retail use (Class A1) to a hot food takeaway/restaurant use (Class A5/A3), together with a new shopfront and installation of external extraction flue.

The proposed shopfront change would involve the creation of a recessed and fully glazed entrance on the southern side of the front elevation to Delce Road. The proposed flue would project through the ground floor extension roof to the rear of the property and close to the boundary with 132/132a Delce Road.

No hours of opening have been supplied on the application form but the applicant advises of the intention to open between 12 midday to 11pm every day of the week. He advises that no delivery service is intended initially but may do so in the future as an ancillary aspect of the proposed use.

[It should be noted that this is a resubmission application but within the description are more items than were within the description of the MC/18/1567 application description. The items now added to the description were also shown on the drawings of the MC/18/1567 application and should have been within the planning description. Therefore it is reasonable to accept the application as a resubmission in this case with the additional items named in the application description.

Relevant Planning History

MC/18/1567 Change of use from retail (Class A1) to take-away/restaurant (Classes A3 and A5) (Refused)

This application was refused for the following reason:

“Without evidence to the contrary, the applicant has failed to demonstrate that the proposed flue/ducting system would not have a detrimental impact on the amenity of neighbouring occupiers, in particular to the residents of the upper floor self-contained flat, and residents of the flat to the rear of the building, contrary to Policy BNE2 of the Medway Local Plan (2003) and Paragraph 127f of the NPPF (2018).”

MC/17/2101 Prior notification for the change of use from Class A1 (shop) to Class C3 (dwellings) (Prior Approval not required)

MC/17/0123 Variation of condition 2 to allow a minor material amendment to planning permission MC/14/3755 to allow for alteration to widen the side dormer, alteration to existing single storey roof together with insertion of 2 roof lights, a window to ground floor north elevation, and insertion of additional roof light to the ground floor south elevation (Approval)

MC/14/3755 Conversion of redundant space above shops to provide 2 additional residential units and sundry alterations to shopfront and extension to rear/ side of building (Approval)

MC/12/2696 Construction of a part two/part single storey extension to rear to facilitate formation of 2 one-bedroom flats at first floor level and additional retail space and garage at ground floor level; new shop fronts and security shutters to front and side elevations (Approval)

Representations

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

Public Health, Integrated Transport and Environmental Protection have been consulted. Comments received from Environmental Protection have been included within the appraisal section of this report.

The Environmental Protection officer has responded raising concern in respect to noise disturbance, from the flue exhaust, to the occupier of the 132a Delce Road, which appears to have a bedroom window located in the rear elevation.

The Integrated Transport officer advises that no significant or severe impact will occur to the highway or highway safety as a result of the proposal.

Seven letters have been received all raising objections to the proposal based on the following grounds:

- The proposed scheme would result in increased highways traffic and vehicle movement from customers and lorries delivering food, which would exacerbate the existing issue of congestion along Delce Road;
- There is insufficient off street parking provision in the area;
- Negative impact to neighbours due to cooking smells and noise from the extraction flue;
- No waste storage proposed;
- Noise disturbance to neighbouring dwellings as a result of late night openings;
- Increase littering in the area;
- The proposal is to serve food that is not healthy;
- The A5 frontage would exceed the 15% threshold in Medway Council's Hot Food Takeaways guidance note.

Other matters raised are no material to planning.

9 letters of support have been submitted.

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 2018 and are considered to conform.

Appraisal

Background

No. 128-130 Delce Road is located within a built-up area, in a mixed residential and commercial use. The property is one of a row of properties with commercial use at ground floor level and flats over and within an area designated as a Local Shopping Centre under Policy R10 of the Local Plan. The application unit is the ground floor commercial unit which was last in use as an A1 use (convenience store). The site is located at the junction of Delce Road with Castle Avenue and attached to the rear elevation of the property, fronting Castle Avenue are relatively newly built residential units, built into what was the rear garden of 128-130 Delce Road.

Principal

Policy R10 of the Local Plan identifies Local Shopping Centres and further identifies that the application property falls within a Local Shopping Centre. The policy emphasises that Local Shopping Centres cater for the day-to-day convenience needs of the neighbouring public, and states that the loss of existing shopping facilities and uses (i.e. Classes A1, A2 & A3) will not be permitted unless an improvement to the local amenity occurs that outweighs the loss. Paragraph 80 of the National Planning Policy Framework emphasises that planning decisions should help to create the conditions in which businesses can invest, expand and adapt and that significant weight should be placed on the need to support economic growth and productivity, taking into account local business needs.

In this case the property has been vacant for some considerable time and as such has a very poor appearance that detracts from the street scene and the area. To have the property back in an active use would provide improvement visually to the local area and public amenity and would also support local business needs in a situation where the continued use of the unit for A1 use is seemingly not required.

Therefore, in principle the proposal is considered to be acceptable.

Design

Paragraph 127 of the National Planning Policy Framework and policy BNE1 of the Local Plan require good design that is appropriate in relation to the appearance and functioning of the built and natural environment.

In this case the site is within the urban area and within a row of properties in commercial use at the ground floor level.

The development would bring a currently tired, worn and vacant building into use with an active frontage and the introduction of the proposed glazed shopfront would be an acceptable change to the frontage of the building for the intended use and appropriate in relation to the character, appearance and functioning of the surrounding built environment.

The matter of the flue will be considered separately.

Healthy Lifestyles

Paragraph 91 of the NPPF (2018) directs that planning decisions should aim to achieve healthy, inclusive and safe places which [in part] 'enable and support healthy lifestyles...for example...access to healthy foods...' and in part paragraph 127 directs that new development should create places 'which promote health and well-being'.

Medway Council's *Hot Food Takeaways in Medway* Guidance Note (2014) aims to mitigate the impact that A5 use classes have on local obesity levels by setting a 15% threshold for A5 uses within a Neighbourhood or Local Centre.

In this case the application site falls within a Local shopping Centre and it is noted that the previous application MC/18/1567, of which the current proposal is a resubmission, considered this aspect and concluded that:

'In review of the relevant National Planning Policy Guidance and Local Development Plan guidance above, the principle of the change of use from A1 to A3 & A5 is considered acceptable. It is important to highlight that because the proposed scheme would bring the Local Centre's linear frontage to its maximum threshold for A5 Class uses, any further similar proposals along Delce Road is likely to not be considered acceptable.'

Therefore no objection is raised in respect to the matter of Healthy Lifestyles.

Amenity

Paragraph 127 of the National Planning Policy Framework requires that development functions well over its lifetime and provides a high standard of amenity for existing users (neighbours). Saved policy BNE2 of the Local Plan seeks to protect the amenities of neighbours in terms of privacy, daylight, sunlight, noise, vibration, heat, smell, airborne emissions. Policy R18 of the Local Plan relates to new restaurant and take-away uses and directs that such uses will be permitted only when they do not result in significant detrimental impact on neighbours, the hours of opening area acceptable in relation to the amenities of the area, suitable refuse facilities are provided, and acceptable extraction arrangements are provided to mitigate against fumes and smells.

The proposal is for a change of use but the conversion works do include some external changes in the form of a new shopfront and a fume extraction flue. The proposed external changes are not of a scale or location that they would result in a loss of daylight to or overshadowing of neighbours' properties. The nature of these external works would not result in a loss of privacy to neighbours' property.

However, in respect to outlook from neighbour's windows it is noted that the proposed flue would project through the flat roof of the single storey extension of the unit and would be located about 2.5m from the rear bedroom window of 132a Delce Road and would be very prominent within this view. The view from this bedroom windows is already restricted to a great extent by the two storey rear projections, which are original to these properties, and also the more recent construction of the new flats in the rear garden of 128 – 130 Delce Road, fronting Castle Avenue. Into this restricted view the prominent and close position of the proposed flue would dominate the outlook from the bedroom window of the 132a Delce Road and as such cause harm to the living conditions of the occupier of that unit.

Furthermore, whilst the council's Environmental Protection officer advises that the height, location and operational design of the proposed flue will be able to suitably disperse cooking odour, they are concerned that noise generated from the flue exhaust will disturb occupiers of the bedroom of 132a Delce Road, which is only about 2.5m from the flue. No noise assessment has been submitted with the proposal to assist the assessment of this aspect or demonstrate that any noise, and vibration, can be suitably mitigated. It may be that when a noise assessment has been undertaken and submitted that the exhaust flue may be able to be adapted, if not satisfactory as proposed, by measures such as changing the cowl, moving the exhaust, angling the exhaust, etc. The case officer has not further requested a noise assessment from the applicant as this was the reason for the refusal of the last application and will not overcome the matter of the harmful visual impact of the exhaust flue within the outlook of the bedroom window of 132a Delce Road.

In terms of the hours of opening the applicant has advised verbally that the intention is to close by 11pm every night of the week. In this location, which is a Local Shopping Centre, various units operate a similar closing time and as such the proposed hours of opening would not be harmful to residential amenities.

Whilst not specified, it is noted that the unit has a covered yard which could be used to store waste/recycling generated from the proposed use prior to collection. This could be the subject of a planning condition to ensure waste is not stored on the highway outside of the unit, to the detriment of the local amenity.

Therefore, the proposal is considered to be harmful to the living conditions of occupiers of 132a Delce Road due to the proposed flue appearing as a dominant and unpleasant feature within the outlook from the bedroom and resultant noise disturbance from the exhaust flue when operating. The proposal is considered to be contrary to paragraph 127 of the National Planning Policy Framework and saved policies BNE2 and R18 of the Local Plan.

Highways

Paragraph 127 of the National Planning Policy Framework requires that new development functions well within the area in which it is situated. Policy R18 of the local plan required that acceptable parking arrangements are provided and policy T13 relates to the council's adopted vehicle parking standards.

In this case the site is located within a Local Shopping Centre, served by on-street parking bays which are controlled by permit parking. None of the commercial units in the centre have on-site parking available for shoppers but the nature of the Local Shopping Centre is that it provides amenities for the local residents and many visits to the shopping centre will therefore be on foot.

The council's adopted parking standards are the same for both A1 uses, which is the established use of the unit, and the proposed A3/A5 use. As such no objection is raised to the proposal in respect to parking matters.

Conclusions and Reasons for Refusal

On balance, while the proposal would bring a long-term vacant unit back in to use, to the benefit of the wider area, this is balanced against the very localised harm that would result to the living conditions of the occupier of 132a Delce Road. The proposed flue is located in very close proximity to the bedroom window of 132a Delce Road and would both appear as a very dominant and unappealing structure within the already restricted outlook from that bedroom, and would also result in noise disturbance to occupiers of that bedroom when operating. The proposal is considered to be contrary to saved policies BNE2 and R18 of the Medway Local Plan 2003 and paragraph 127 of the National Planning Policy Framework 2018.

It is the officers' view that the localised harm from the proposal outweighs the benefit to the wider area and the application is therefore recommended for refusal.

The application would normally be determined under delegated powers but is being referred for Committee determination due to the number of representations received expressing a view contrary to officer's 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://publicaccess1.medway.gov.uk/online-applications/>