

MC/22/1002

Date Received: 22 April 2022
Location: 153 Fairview Avenue Wigmore
Gillingham Medway
Proposal: Change of use from butcher's shop (F2) to takeaway pizza shop
(Sui generis) together with the provision of a rear yard area for
staff parking and deliveries - Resubmission
Applicant: Mrs D Kaur
Agent: L Brown Associates Ltd
Mr Leslie Brown 34 Fallowfield
Chatham
ME5 0DX
Ward: Hempstead And Wigmore Ward
Case Officer: Madeline Mead
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 29th June 2022.

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:

Received 22 April 2022:

1310-SK04 Existing and Proposed Floor Plan

Received 27 April 2022:

1310-SK06 Existing and Proposed Block Plans

1310-SK07 Existing and Proposed Elevations

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 11.30 to 14:00 and 17:00 to 22:00 Monday to Friday; and between the hours of 11:30 to 22:00 on Saturdays, Sundays and Public Holidays.

Reason: To ensure that the development does not prejudice the amenities of neighbouring property in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 4 Prior to the commencement of the use hereby permitted, a scheme for the extraction and treatment of cooking fumes, including details for the control of noise and vibration from the system, shall be 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 prior to the commencement of the use and thereafter maintained in accordance with the approved details.

Reason: To ensure that the development does not prejudice the amenities of neighbouring property and ensure compliance with Policies BNE2 and R18 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 a butcher's shop (Class F2) to a takeaway pizza shop (Sui Generis).

No external alterations are proposed although the use would likely require the installation of an extraction equipment.

Staff parking will be provided to the rear yard/garden area and most supplies will be delivered to this rear access too. Any HGV deliveries necessary will access the site via the front lay-by area as currently takes place.

The proposed opening hours are 11:30 to 14:00 and 16:00 to 22:00 Monday to Friday, 11:30 to 22:00 Saturday, Sunday and Public Holidays.

Relevant Planning History

MC/20/3082	Change of use from butcher's shop (A1) to takeaway pizza shop (Sui generis) together with the provision of a rear yard area for staff parking and deliveries - resubmission of MC/19/2316 Decision: Refusal Decided: 16 February 2021 Appeal: Dismissed
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Decided: 20 December 2021

MC/19/2316

Change of use from Class A1 (Butchers) To Class A5 (Takeaway Pizza Shop)

Decision: Refusal

Decided: 4 November 2019

Appeal: Dismissed

Decided: 10 March 2020

GL/94/0255/50/0064

Proposed change of use from Class A1 retail to Class A3 takeaway together with residential accommodation

Decision: Refusal

Decided: 27 May 1994

Representations

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

Thirty-two letters of objection have been received with the following comments:

- Noise increase from extraction, people congregating outside on foot and in cars.
- Already a takeaway within this parade of shops.
- Close to school, encourage junk food consumption.
- Increase in litter.
- Loss of local butcher shop.
- Impact on highway and parking pressures.

The agent has submitted a letter in response to the objections raised. The letter addresses the main issues that have been raised above.

The Environment Agency have also been consulted and they have advised that they have no comment to make on the application.

Development Plan Policies

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 2021 (NPPF) and are considered to conform.

Planning Appraisal

Background

A Planning application was previously refused for the change of use from Class A1 (Butchers) to Class A5 (Takeaway Pizza Shop), under planning reference MC/19/2316 for the following reasons:

The proposed scheme is considered unacceptable in principle, on the basis that it would result in an over-concentration of A5 units in this parade, which would adversely affect the vitality and viability of this local centre and as well as the health of local residents, and there would be no improvement to local amenity, or any provision of community facilities proposed that would outweigh the loss of this retail unit. As such, the proposal is contrary to Policies R10 and R18 of the Medway Local Plan 2003 and Paragraph 92 of the National Planning Policy Framework 2019.

The proposal fails to demonstrate, without evidence to the contrary, that the change of use would not have a detrimental impact on parking and highway safety. As such, the proposal is contrary to Policies R18, T1 and T13 of the Medway Local Plan 2003 and Paragraph 109 of the National Planning Policy Framework 2019.

This decision of refusal was taken to appeal under reference W/4000391. The appeal was dismissed on the 10 March 2020 with the following conclusion:

I have found there would be no harm to health, vitality and viability and that the proposal would broadly accord with the overall strategy which seeks to avoid an over-abundance of hot food within the primary retail function of the local centre. Nevertheless, the harm identified in relation to highway safety is decisive for the reasons given. Consequently, the proposal would be contrary to the development plan. There are no material considerations of sufficient weight or importance that determine that a decision should be taken other than in accordance with the development plan and therefore planning permission should be refused.

A subsequent planning application was submitted under planning reference MC/20/3082 for the change of use from butcher's shop (A1) to takeaway pizza shop (Sui generis) together with the provision of a rear yard area for staff parking and deliveries. This application was also refused for the following reason:

The proposed scheme is considered unacceptable it fails to demonstrate, without evidence to the contrary, that the change of use would not have a detrimental impact on parking and highway safety. As such, the proposal is contrary to Policies R18, T1 and T13 of the Medway Local Plan 2003 and Paragraph 109 of the National Planning Policy Framework 2019.

This decision was also taken to appeal under reference APP/A2280/W/21/3274592. The appeal was dismissed on the 20 December 2021 with the following conclusion:

It therefore follows that I am unable to conclude that the impact of the development on the highway would be acceptable. The development is contrary to policies R18 and T1 of the Medway Local Plan 2003 which in summary seek to ensure that developments have an acceptable impact on highway safety taking into account the capacity of the highway network and combined effects with similar uses. The proposals would also conflict with paragraph 111 of the Framework insofar as it aims to prevent development where there would be an unacceptable impact on highway safety.

Principle

Policy R18 of the Local Plan applies to sites outside of core retail areas, in order to control the use of hot food takeaways, restaurants and other uses. Development of such uses is only permitted where there is no significant detrimental impact on neighbouring land uses or to residential amenity; where the combined effect of similar uses within the locality would be acceptable in environmental and highway terms; where the proposed hours of opening are acceptable in relation to the amenities of the area; where suitable refuse, disposal and collection facilities are provided; and the proposal complies with Policies BNE2, T1, T13 and T22 in respect of noise and general disturbance, the proper extraction and treatment of fumes and smells, and arrangements for parking, servicing and access for people with disabilities.

Furthermore, the Local Plan emphasises that Local Shopping Centres such as this parade are important for providing locally available retailing and other services, and the Council will seek to protect their position in the retail hierarchy by resisting changes of use from Class A1 uses. Therefore, the loss of existing shopping facilities and uses (i.e., Classes A1, A2 and A3) will not be permitted unless an improvement to the local amenity or the provision of community facilities occurs that outweighs the loss, as outlined within Policy R10 of the Local Plan. The Local Shopping Centre includes properties 151 to 169 (odds). These policies were written prior to the amendment to the Use Classes Order which came into effect on the 1 September 2020. The existing use of the building now falls within the new Use Classes Order and is a F.2 community use and the proposed hot food takeaway also falls within the new Use Classes Order and is a Sui Generis use, however, Policy R10 still applies to the existing and proposed use.

Section 8 (Promoting healthy and safe communities) of the NPPF emphasises that planning decisions should aim to achieve healthy, inclusive and safe places, and paragraph 92 asserts that this should include taking into account and supporting the delivery of local strategies to improve community health, social and cultural well-being.

Medway Council's *Hot Food Takeaways in Medway* Guidance Note (2014) recognises that the over-provision of takeaways within local centres or in proximity to schools (within 400m) are not appropriate - either in terms of the vitality and viability of centres or from a health perspective. Too many units together can undermine the main retail function of a centre and appear to promote hot food takeaways in preference to healthier food options. This is recognised in Policy R18 of the Local Plan, as discussed above.

The guidance aims to mitigate the impact that A5 use classes (now sui generis) have on local obesity levels by setting a 15% threshold for A5 uses within a Local Centre, such as this. The guidance raises concerns in relation to the proximity of such uses to schools, of which there is one primary school, Fairview Community Primary School, within 400m of the premises.

The proposal seeks the change of use of No. 153 from Class F.2 (formerly Class A1) to a Sui generis use (formerly Class A5), which would serve as a pizza takeaway. One other hot food takeaway already exists within the parade of shops and the proposed change of use would bring the Local Centre's linear frontage of hot food takeaway uses to just under 15%.

On this basis, the principle of the change of use from Class F.2 to a Sui generis use is considered acceptable.

Design

Paragraphs 126 and 130 of the NPPF emphasises the importance of good design and Policy BNE1 of the Local Plan states that development should be satisfactory in terms of scale and mass and should respect the visual amenity of the surrounding area.

The proposal would not result in any external changes, and therefore the proposed scheme would be appropriate in relation to the character, appearance and functioning of the surrounding built environment. The proposed development would therefore be in accordance with Policy BNE1 of the Local Plan and paragraphs 126 and 130 of the NPPF.

Amenity

There are some residential units on the upper floors above the commercial units in the locality, including above the application property, and the surrounding area is largely residential.

The applicant has requested opening hours of 11:30 to 14:00 and 16:00 to 22:00 Monday to Friday, 11:30 to 22:00 Saturday, Sunday and Public Holidays. Taking into account the Hot Food Takeaway Guidance, and in particular the proximity of the proposed use to Fairview Community Primary School, it would be considered appropriate to restrict the opening hours through an appropriate condition, to ensure the use is not open for a period after the school closes, so as to contribute towards healthier lifestyles for younger people in particular.

An extraction system may be necessary to facilitate the use and therefore if the application were to be considered acceptable, a condition is recommended requesting details of this.

In these circumstances the amenity impact of the proposed change of use would be considered acceptable, including with regard to Policy BNE2 of the Local Plan and paragraph 130(f) of the NPPF.

Highways

On the previous appeal the Inspectors comments regarding highway matters were as follows:

“At the time of my site visit at midday the area of off-street parking outside the site was in frequent use primarily for short visits, and there were several parking spaces available at any one time. I appreciate that this was a snapshot of the parking conditions at that time. The appellant has also submitted photographs of the parking bays at various times during the day, demonstrating varying levels of occupancy. However, these are similarly snap shots of those particular times photographed by the appellant.”

Despite this, there is little evidence before me about the likely impact of the proposed use on those parking bays or the nearby highway. The appellant has compared the existing and proposed uses to the Council's parking standards. Parking standards should, inevitably, be interpreted with reference to specific proposals and I note that neither the existing nor proposed uses benefit from the quantum of parking reported in those standards. The comparable parking standards alone however, in my mind, do not demonstrate that vehicle movements and the use of parking spaces close to the site would be the same for the proposed use as the existing.

I note that during some of the proposed opening hours several of the other uses in the parade would be closed, however the opening hours are likely to be similar to that of the other hot food takeaway to the eastern end of the parade. The cumulative impact of both these uses together has not been addressed and I note that this concern was similarly raised by the previous Inspector. As such it is not possible to conclude that the proposal complies with policy R18 of the Medway Local Plan 2003 which requires that development including takeaway hot food shops outside defined retail core areas, among other things, would be acceptable in terms of highway safety taking into account the combined effect of any similar uses in the locality.

Based on the evidence, there is unlikely to be adequate parking provision within a short and convenient walking distance of the appeal premises. Having considered all matters above, the proposed change of use could result in significant additional parking pressures around the site, which in turn could result in conditions prejudicial to highway safety.

It therefore follows that I am unable to conclude that the impact of the development on the highway would be acceptable."

This application has provided a block plan that shows parking to the rear of the site for approx. three cars, and it is considered that these parking spaces would likely be occupied by employees of the premises and therefore could be managed as such.

A technical note has been submitted with the application, which demonstrates that the car park that serves the parade of shops and the surrounding area has the capacity for the car parking demand associated with the proposed use.

The proposal demonstrates that the use would not have a detrimental impact with regard to highways and parking and is therefore considered to comply with the requirements of Policies R18, T1 and T13 of the Local Plan and paragraph 111 of the NPPF.

Other matters

Public Health has raised serious concerns and objection to the proposed change of use. Public Health objects to the proposal stating that "roughly calculating the linear metres of the shop frontage from GIS (Medway Council mapping software), the current takeaway premises in this parade between 151 and 167 Fairview Avenue appears to take up 8% of the metres in the line of shops. The addition of another takeaway would take this percentage to approximately 17%, which is over the 15% A5 usage outlined in the Hot Food Takeaway Guidance Note."

The case officer has also calculated the linear metres of the shop frontages within this parade of shops and that of the existing and proposed takeaway. Based on the calculations, the figure is below the 15% threshold and as such it is concluded that there would not be an overconcentration of hot food takeaways within this parade of shops. Public Health have also requested a restriction on opening hours should the application be approved, a condition has been recommended to cover this.

Conclusions and Reasons for Approval

The proposed change of use is considered to be acceptable in principle, design and amenity grounds. The proposed use, as demonstrated by the submitted parking survey, would not cause harm to highway nor would it result in an unacceptable strain on existing parking situation or demand in the area. The proposal as such would comply with Policies BNE1, BNE2, R10, R18, T1 and T13 of the Medway Local Plan 2003 and paragraphs 111, 126 and 130 of the NPPF.

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 on Medway Council's Website <https://publicaccess1.medway.gov.uk/online-applications/>