

**MC/22/0923**

Date Received: 11 April 2022  
Location: 44 High Street Chatham  
Medway ME4 4DS  
Proposal: Variation of condition 2 (hours of opening) of prior approval MC/20/1644 - to extend the hours of business from 23:00 hours until 01:00 Thursday, 00:00 hours until 02:00 Friday and Saturday and Sunday from 21:00 hours until 00:00 (midnight) (Resubmission of MC/22/0081)  
Applicant: Mr Kingsley Atuanya  
Ward: River Ward  
Case Officer: Amanda Barnes  
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 1st June 2022.**

**Recommendation - Approval with Conditions**

- 1 The use hereby permitted shall only operate between the hours of 07:30 and 23:00 Monday to Wednesday, 07:30 and 01:00 Thursdays, 07:30 to 02:00 Fridays and Saturdays and 10:00 to 00:00 Sundays and Public Holidays for one year from the date on the decision notice after this time the permitted use shall only operate between the hours of 07:30 and 23:00 Monday to Thursday, 07:30 to 00:00 Fridays and Saturdays and 10:00 to 21:00 Sundays and Public Holidays.

Reason: To allow the Local Planning Authority an opportunity to assess the effect of the extended opening hours on the amenities of the surrounding area in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 2 An acoustic assessment of compliance with the Noise Impact Assessment Issue 02 received 2 May 2022 shall be submitted to and approved in writing by the Local Planning Authority no later than two months after commencement of the operation of the development hereby permitted. Any provisions indicated in the assessment which need to be made to control noise emanating from the site pursuant to the above report shall be submitted in writing for the written approval of the Local Planning Authority within 1 month of the assessment and all works which form part of the approved scheme shall thereafter be implemented in accordance with a timetable to be agreed in writing by the Local Planning Authority and thereafter maintained.

Reason: To regulate and control the permitted development in the interests of safeguarding neighbouring 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**

An application for prior notification of a proposed change of use from retail (Class A1) to restaurant (Class A3 - restaurants and cafes) application MC/20/1644 was approved subject to several conditions.

Condition 2 of application MC/20/1644 states: -

*The use hereby permitted shall only operate between the hours of 07:30 and 23:00 Monday to Thursday, 07:30 to 00:00 Fridays and Saturdays and 10:00 to 21:00 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.*

The current application seeks variation of condition 2 (hours of opening) of prior approval MC/20/1644 - to extend the hours of business in the evening from 23:00 hours until 01:00 Thursday, 00:00 hours until 02:00 Friday and Saturday and Sunday from 21:00 hours until 00:00 (midnight), with the hours on Mondays to Wednesdays inclusive staying unaltered.

## **Relevant Planning History**

MC/22/0081	Variation of condition 2 (Hours of opening) of Prior approval MC/20/1644 to extend the hours of business to – Thursdays 11:00 to 01:00 Friday and Saturday 11:00 to 03:00 and Sundays 11.00 to 23:30 Withdrawn 27 January 2022
MC/20/1644	Prior Notification of a proposed change of use from retail (Class A1) to restaurant (Class A3 - restaurants and cafes) Prior approval required and approved 02 September 2020

## **Representations**

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

**Seven** letters of objection have been received:

- Impact on wellbeing and mental health
- Unacceptable noise levels
- Anti-social behaviour

## **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 2021 (the NPPF) and are considered to conform.

## **Planning Appraisal**

### *Principle*

The property is located within a mixed-use area that is outside the Core Retail Area as shown within the Local Plan. No. 44 was previously in use as a vacant retail shop; and has now been converted to a restaurant.

The building is located within the Star Hill to Sun Pier Conservation Area; however, the building is not listed.

The principle of the use has been accepted as part of the prior approval application.

### *Street Scene and Design*

The NPPF attaches great importance to the design of the built environment. Paragraphs 126 and 130 of the NPPF emphasises the importance of good design and Policy BNE1 of the Local Plan and seeks appropriate design in relation to the character, appearance and functioning of the built and natural environment.

Due to the nature of the proposal which is for a variation in the hours of opening with no alterations to the design it is considered the application is in accordance with Policy BNE1 of the Local Plan and paragraphs 126 and 130 of the NPPF.

### *Amenity*

Paragraph 130f of the NPPF and Policy BNE2 of the Local Plan relate to the protection of neighbour amenities.

As part of the original application the agent sought the opening hours from 07:30 to 23:59 7 days a week. This was considered excessive due to the generation of noise and disturbance when patrons arrive and leave late into the evening given the fact there are residential properties above the ground floor uses within the area, this would be especially

relevant on 'quieter' evenings such as Sundays and Public Holidays. As such it was considered reasonable to apply similar opening times to the other restaurants in the area between 07:30 and 23:00 Monday to Thursday, 07:30 to 00:00 Fridays and Saturdays and 10:00 to 21:00 Sundays and Public Holidays.

The current application seeks to increase the opening hours from 23:00 hours until 01:00 Thursday, 00:00 hours until 02:00 Friday and Saturday and Sunday from 21:00 hours until 00:00 (midnight)

The application includes a noise assessment, it is considered that this assessment reflects the nature of the sound environment of the area. However, Medway Council have received numerous complaints regarding late night entertainment at the site. This includes noise from music and patrons using the premises. A noise abatement notice has been served on the premises and remains in force while investigations into breaches of licensing continue. In light of these complaints, more stringent measures were sought in a revised noise assessment for the control of patron noise.

The noise assessment sets out that the venue is committed to develop and maintain good relations with local residents, neighbours and local authority. The noise management plan sets out the measures that will be adopted:-

- There shall be no re-admission to the premises 15 minutes before closing.
- The management shall make available and regularly promote a contact number for local residents to contact the premises to discuss any specific incidents or concerns either during or after events. The contact number will be posted to all nearby residents and displayed in the window at the front of the premises. The number will be manned at all times and any action taken as a result of the complaint should be recorded and kept. The applicants will always speak with their neighbours to find out best ways to prevent noise nuisance which they will implement.
- A sound limiter will be installed to mitigate the breakout noise. Furthermore, all doors and windows shall be kept closed except for access and egress. The volume of the music will be reduced 30 minutes before close of time.
- Staff will actively encourage the gradual dispersal of customers to minimise nuisance and discouraged from loitering. During the last 20 minutes of trading the following strategies will be implemented to encourage the gradual dispersal of customers. These include the gradual increase in ambient lighting levels and playing of music of slower content and reduced volume. A member of staff will be positioned in an area close to the main exit to oversee the end of night departure period. Customers will be encouraged to be considerate upon leaving the premises. Customers will be asked not to stand around loudly talking outside the premises. The applicants will also offer to phone for taxis to pick up immediately from inside the premises than loiter outside.
- The premises will have a Door supervisor monitoring the outside area restricting access to only three people at a time to be outside smoking after 21:00. No beverages will be allowed outside, and non-smokers will not be allowed to

accompany those who are smoking. The use of external garden areas will cease after 22.00 and closed to all, anyone that wish to smoke with be encouraged to cross over to the muster point which is across the road away from residents' property to smoke.

- Routine monitoring will be regularly conducted around the perimeter of the premises during opening hours. Door supervisors will be monitoring after closing. Details of checks, observations and any actions taken as a result of such shall be recorded. A noise logbook will be kept on the premises and maintained by management and be available for inspection by the Local Authority upon request.
- All staff will be fully trained to be aware of the requirements to reduce external impact from noise. All staff will be made fully aware and conversant with the noise management policy and procedures.
- Notices will inform customers of the applicant's commitment to local concerns. Prominent, clear and legible notices will be displayed at the exits requesting the public to respect residents and to leave the premises and the area quietly. Signs will be in smoking and garden area asking patrons to be keep it quiet and respect our neighbours while in the garden or smoking.
- The noise management plan will be reviewed at least annually or as agreed appropriate to ensure that it is streamlined and effective. New and innovative approaches to problem solving or incidents and any lessons learnt will be incorporated accordingly. The applicants consider the Noise Assessment document as a live document which evolves by experience in agreement with the Local Authority.

It is considered that subject to a suitably worded condition to submit an acoustic assessment of compliance with the noise assessment and the measures set out above, the application is considered acceptable.

Considering the various issues that have been encountered with noise and adhering to the terms of licenses. it is considered prudent to grant permission for the additional hours on a temporary basis so that evidence can be gathered that the noise mitigation measures remain effective and that noise from the premises does not become a nuisance to the surrounding residential properties. The premises should continue to log any noise complaints and a review can be made after 12 months as to how effective the noise mitigation at the site has been in restricting the number of complaints.

Subject to the above recommended conditions the application is considered acceptable with regard to Policy BNE2 of the Local Plan and paragraph 130(f) of the NPPF.

### *Highways*

Due to the nature of the application, it is considered that there would be no material difference and the proposal is in accordance with Policy T13 of the Local Plan.

### **Conclusions and Reasons for Recommendation**

The application is considered acceptable with regard to principle, design and highways for a temporary period to enable the Local Planning Authority opportunity to monitor the actual effect of the extended hours on the amenity of neighbouring occupiers and conditions to control the noise levels and adherence to the acoustic report. On the basis of the suggested conditions, the application is considered to be acceptable with regard to affect on amenity in accordance with Policies BNE1, BNE2 and T13 of the Medway Local Plan 2003 and paragraphs 111, 126 and 130f 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.

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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://publicaccess1.medway.gov.uk/online-applications/>