

MC/10/3757

Date Received: 15 October, 2010

Location: Bayleaf Restaurant, 146 Hempstead Road, Hempstead, Gillingham, ME7 3QE

Proposal: Temporary permission for restaurant with home delivery and overnight accommodation for staff

Applicant: Bayleaf Restaurant

Agent: Alford J S Alford RIBA Three Elms Pip's View Cooling Rochester, Kent ME3 8DH

Ward Hempstead & Wigmore

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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 5 January 2011.**

**Recommendation - Approval with Conditions**

- 1 The use hereby permitted shall cease on or before 1<sup>st</sup> October 2012 and the flues/extraction unit, signage and other paraphernalia associated with the use of the property as a restaurant shall be removed in their entirety within in three months from the date of the expiration of the date of the permission.

Reason: To ensure that the permitted development does not prejudice proposals for redevelopment of the site in accordance with Policy S6 of the South East Plan 2009 and Policy CF1 of the Medway Local Plan 2003.

- 2 The hours of operation of the restaurant use and hot food delivery use shall not be outside the hours of 10.30 to 23.00 on Mondays to Saturdays and 10.30 to 22.00 on Sundays and Public Holidays.

Reason: To ensure that the permitted development does not prejudice residential amenity in accordance with Policy BE1 of South East Plan 2009 and Policy BNE2 of the Medway Local Plan 2003.

- 3 10 car parking spaces shall be kept available at all times for parking in association with the A3 restaurant use and hot food delivery use herein approved.

Reason: To ensure that the permitted development does not prejudice residential amenity through inadequate parking provision in accordance with Policy BE1 of South East Plan 2009 and Policy BNE2 of the Medway Local Plan 2003.

- 4 The use of the property shall be restricted to restaurant use (together with ancillary first floor accommodation) and hot food delivery service only and for no other purpose, including a hot food collection facility from the premises.

Reason : To ensure that the permitted development does not prejudice residential amenity in accordance with Policy BE1 of South East Plan 2009 and Policy BNE2 of the Medway Local Plan 2003.

- 5 The hot food delivery service shall not operate separately from the restaurant use herein approved.

Reason : To ensure that the permitted development does not prejudice residential amenity through intensification of uses at the property in accordance with Policy BE1 of South East Plan 2009 and Policy BNE2 of the Medway Local Plan 2003.

- 6 The flue extractor system installed as part of the permission granted under ref MC2006/0691 shall be maintained to a satisfactory order for the duration of the permission or operation of the use, whichever terminates first.

Reason: To ensure that the permitted development does not prejudice residential amenity in accordance with Policy BE1 of South East Plan 2009 and Policy BNE2 of the Medway Local Plan 2003.

- 7 The development hereby permitted shall be carried out in accordance with the following approved plans: location plan, drawing N24.20 and supporting statements received on 16 October 2010.

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

**For the reasons for this recommendation for approval please see Planning appraisal section and conclusions at the end of this report.**

### **Proposal**

Temporary permission for restaurant with home delivery and overnight accommodation for staff

### **Relevant Planning History**

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|------------|--|
| MC/08/0443 | Retrospective application for temporary permission for over night accommodation for staff at first floor level<br><b>Approval with Conditions 22 May, 2008</b> |
| MC/06/0691 | Temporary change of use from doctor's surgery to restaurant<br><b>Refusal 14 June, 2006</b><br><b>(Appeal Allowed 29 March 2007)</b>                           |

## **Representations**

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

**5 letters** have been received. 1 in support of the application and 4 raising objection.

The objections are in respect of the following matters:

- parking matters in Hempstead Road
- need for local medical facility still exists;
- additional traffic, parking, cooking smells, noise and disturbance
- cooking smells disturbing residential amenity;
- health services operating from a 'mobile' facility next door – site needed for health services;

[Various matters have been raised that are not material to the consideration of this planning application.]

The letter of support raises the following points:

- no problem with noise and disturbance;
- the home delivery service 'is hardly likely to cause problems to any local residents';
- is desirable this property is occupied overnight;
- greater security than an unoccupied property;
- NHS do not intend to occupy for 2 years – do not want to see this property unoccupied;
- Restaurant is asset to the village and brings evening activity together with pub and co-op

A petition in support of the application has been received from 35 recognised addresses and 13 non-specific addresses. Most comments made are non-material to the planning consideration (e.g. 'we enjoy dining here', 'we benefit from home delivery', 'good curry', they support local activities, etc). Some individuals have made material comments. These are in regard to the following:

- contributes to the local economy;
- 'no smells, no noise';
- the restaurant is a 'much needed resource in this area'.

## **Development Plan**

The Development plan for the area comprises the South East Plan 2009 and Medway Local Plan 2003.

## **Planning Appraisal**

The site comprises a detached chalet-style building that is in use as 'The Bayleaf' restaurant (with ancillary staff accommodation at first floor level). There is a medical facility in the adjacent buildings, 144 Hempstead Road. The site is located on the western side of the Hempstead Road, just south of the roundabout junction with Dukes Meadow Drive. There is a large detached outbuilding to the rear of the property and a drive running to the side of the building giving access to parking at the rear. There is further parking in the front of the property. To the south is another chalet-style building, which is used as a pharmacy. The site forms part of the Local Shopping Centre at Hempstead Road, as identified in the local plan.

### *Background*

This application is for the temporary use of the premises as a restaurant with overnight accommodation for staff at first floor level and also for the operation of a home delivery service.

Historically the property was granted a temporary permission for the use of the premises as a restaurant at appeal, for a period of 3 years, and a later permission was granted for the use of the first floor level for staff accommodation in association with the restaurant permission.

The temporary permission granted by the planning inspector (restaurant use) used a condition that restricted the use of the property to being a 'restaurant only' however enforcement investigations revealed that during the operation of the restaurant both a hot food collection and delivery service have operated from the property without the benefit of planning permission. At the current time the collection service has ceased but the delivery service has not and as such this element now forms part of the current application.

The applicant's agent contends that the delivery service forms part of the A3 restaurant use against the LPA's consideration that the delivery service is a form of A5 use (Hot Food Takeaway). The LPA is also minded that the delivery service is not considered as 'ancillary' to the restaurant (A3) use due to the level of deliveries that take place and as such this application is being assessed as a part A3/ part A5 use, together with ancillary staff accommodation.

The applicant's agent has submitted an appeal decision for a property in Elaine Avenue, Strood where distinction has been made between a take-away and home delivery.' This decision notice has been submitted for information only but it is clear that the use in the appeal decision supplied is a distinctly different operation than the current proposal. The appeal decision supplied relates to the operation of a 'catering company for outside functions' (with no restaurant at the property at all) and was considered to be a B2 use (General Industry). As such this decision is not considered to be a material consideration in the current assessment.

Members are reminded of two enforcement notices issues on 27<sup>th</sup> August 2010 in respect of this property.

- Notice one served in relation to the operation of the property as a restaurant with ancillary accommodation and asked for the uses to stop. Compliance period for the notice is 1<sup>st</sup> October 2012.
- Notice two was served in relation to the operation of a hot food take-away/delivery service and asked for the operation (delivery and take away service to stop. Compliance period for the notice was 1<sup>st</sup> November 2010.

Appeals have been lodged against these enforcement notices and these will be heard at an informal hearing; the date of this hearing has been agreed as yet.

### *Main Matters*

The main matters for consideration in this consideration are:

- loss of community facility (the last use was doctor surgery);
- implications of the Enforcement Notices;
- impact of a delivery service only;
- amenity matters (cooking smells)

### *Loss of community facility*

Policy CF1 of the local plan states that development that “will result in the loss of existing community facilities will only be permitted where it can be demonstrated that exceptional circumstances exist that it would be beneficial to redevelop the site.”

The permitted use for this property (as the previous temporary use as a restaurant has expired) is as a D1 use (non-residential institution). The NHS have advised (email communication dated 19 May 2010) that there is still a need for this site for the provision of a new healthcare facility but it is unlikely to be required for the next 2 years.

Therefore in terms of policy CF1 it is only acceptable to consider a non-D1 use for a temporary period or an alternative D1 use, such as a nursery, which could occupy the building without the need for planning permission.

The current application is for a temporary period of 2 years, which would be acceptable with regard to policy CF1 as the site will still be available for redevelopment in the longer term.

### *Implications of the Enforcement Notices*

The effect of the first notice is that the operation of the restaurant until 1<sup>st</sup> October 2012 is considered to be acceptable by the LPA – subject to various conditions. (These conditions are repeated in the suggested conditions in this report.) As such the council has already established this element of the current application as acceptable. However the second notice has the effect of not agreeing to the operation of any hot food delivery takeaway facility from the property.

(Although the applicant of the current application has appealed against the two Enforcement Notices they have not appealed against part (a) of either Notice – which would have allowed the inspector to consider the planning merits of the hot food takeaway/delivery service. Therefore all the inspector will be considering whether breaches stated in the notices have occurred and is the time period for compliance reasonable.

As the LPA (via the first Enforcement Notice) has agreed the operation of the restaurant and ancillary accommodation until 1<sup>st</sup> October 2012 the main matter for consideration in regard this application is if any hot food collection and/or delivery service from the premises in addition to the restaurant is acceptable.

The applicant has not applied for a collection/takeaway service for hot food at the premises but only a 'delivery service'. It is considered that the key issue in this application is the operation of a home delivery service in addition to the restaurant and accommodation. (Although a collection service also needs to be considered with regard to the possible restrictive conditions so that in the future a collection service does not start and be claimed to be 'ancillary' to an A3 use.)

#### *Impact of a delivery service*

The details supplied in support of the current application state that there is parking for 10 cars on site; that there are 8 full time staff and two part time staff working for the restaurant; that the opening hours proposed are 10:30 to 23:00 for every night of the week.

The Design and Access statement says that on weeknight the home delivery service there are currently approximately 1 to 4 deliveries an evening and on weekend nights 10 to 12 deliveries. The home delivery staff use a rear access to the car park.

The site is located within the Local Shopping Centre at Hempstead and as such there is a level of expectation of movement relate to the commercial uses of the centre. The whole of the rear of the site has been a car park for some considerable time, in addition to parking to the front, and on-site parking is of a level that can accommodate most of the parking related to the proposed use. There is also on street parking available for any low levels of overspill parking from the use.

The level of car movements relating to the delivery service over and above the restaurant use alone is not likely to cause any significant loss of noise and disturbance as normally occurs with a collection/takeaway service due to coming and going of the customers including slamming of car doors, many car movements, shouting instructions between customers, chatting while waiting outside for orders etc. In a residential area takeaway use like this may cause a disturbance to residents and is outside of the control of the commercial operator. However with a delivery service noise related to the service is within the control of the commercial operator and can be controlled

Therefore it is considered that a hot food delivery service is acceptable in addition to the restaurant use at this property but not a hot food collection service. This can be controlled by a planning condition.

Subject to conditions regarding the retention of on-site parking; hours of operation; that there shall be no hot-food collection service operating from the premises and that the hot food delivery service shall not be separated from the restaurant, the proposal is recommended for approval.

The proposal is considered to comply with policy BE1 of the South East Plan 2009 and policy BNE2 of the Medway Local Plan 2003.

### *Cooking Smells*

Concern has been expressed with regard to the 'cooking smells' from the property. The inspector who allowed the restaurant conditioned that an extraction system be agreed with the LPA and fitted prior to operation commencing. An extractor system was approved as part of the inspector's decision. A planning condition is recommended to ensure it is maintained for the life of a further temporary permission.

The proposal is considered to comply with policy BE1 of the South East Plan 2009 and policy BNE2 of the Medway Local Plan 2003.

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

Subject to the conditions laid out at the beginning of this report the proposal for the use of this property as a restaurant, with ancillary accommodation, and hot food delivery service for a temporary period until 1<sup>st</sup> October 2012 accords with Policies BE1 and S6 of the South East Plan 2009 and Policies BNE1, BNE2 and CF1 of the Medway Local Plan 2003.

[This application would normally fall to be determined under delegated powers but has been referred to planning committee due to the level of public representation received and deviation from the enforcement Notice 2 mentioned above.]

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### **Background Papers**

The relevant background papers relating to this planning application comprises: the application and all supporting documentation submitted therewith; and items identified in any Relevant History and Information section and Representatives section within the report.

Any information referred to is available for inspection in the Planning Offices of the Council at Gun Wharf, Dock Road, Chatham.