

**MC/25/0626**

Date Received: 24 March 2025  
Location: 85 Shakespeare Road, Gillingham, Medway ME7 5QN  
Proposal: Conversion of the existing Class ( E ) retail shop into a Class (Sui Generis) Hot food takeaway, along with the installation of a kitchen extraction system.  
Applicant: Mr Markandu Muralitharan  
Agent: Sanaa Designs  
Case Officer: Mr Manahil Khan 18 Grenadier Close  
Rainham  
ME8 8NQ  
Ward: Gillingham South  
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 2 July 2025.**

**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 28 May 2025:

PL-01/85SR/SD102 Rev A Proposed Floor Plans

Received 24 March 2025:

PL-01/85SR/SD103 Proposed Elevations

Location Plan

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

3 All materials shall match those set out in the Application form received 24 March 2025.

Reason: To ensure that the appearance of the development is satisfactory and without prejudice to conditions of visual amenity in the locality, in accordance with Policy BNE1 of the Medway Local Plan 2003.

- 4 The use hereby permitted shall only operate between the hours of 11:00-15:00, 17:00-23:00 Mondays-Thursdays, 11:00-15:00, 17:00-00:00 (midnight) Fridays 11:00-00:00 (midnight) Saturdays and 11:00-22:00 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.

- 5 The separating ceiling and floor between the ground floor and first floor should resist the transmission of airborne sound such that the weighted standardised level difference ( $DnT,W+Ctr$ ) shall not be less than 50 decibels as measured and calculated in accordance with BS EN ISO 162-1 2014.

Reason: To ensure that the amenity of occupiers of the first floor is not adversely affected by noise from the use at ground floor.

- 6 Prior to the commencement of the development 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 and approved in writing by the Local Planning Authority. The noise rating level 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 design of the system shall be in accordance with the latest version of the Ricardo EMAQ guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems and informed by an Odour Risk Assessment. 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 ensure that the amenity of occupiers of the development site/ surrounding premises is not adversely affected by noise and odours from proposed installations/ equipment.

- 7 There shall be no collections associated from the proposed use from the premises at any point and only deliveries are to be permitted from the approved use.

Reason: To regulate and control the use in the interests of amenity and highways safety in accordance with Policies BNE2 and T1 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**

The proposal seeks full planning consent for the change of use of the existing retail shop falling within use Class E to Sui Generis use (hot food takeaway) for the sale of hot food where consumption of that food is mostly undertaken off the premises.

## Relevant Planning History

No relevant planning history found.

## Representations

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

**19 representations** have been received to raise the following objections:

- Site is primarily in residential occupation and concerns are raised in relation to additional parking strain being put in this location.
- Already lots of takeaways present on Canterbury Street and other surrounding roads.
- The hours of operation are considered to be detrimental to the amenity of nearby residential properties.
- Concerns regarding the fire escape for the above residential unit.
- Impact on the hospital and emergency vehicles if there is an increase to on street parking.
- The proposals initially did not indicate sufficient levels of bins in accordance with guidance.
- Concerns regarding an increase in litter and anti-social behaviour associated with the use.
- Odours and noise concerns relating to the proposed use.

**Kent Police** have been consulted on this application and have recommended additional security measures. *An informative will be added to the decision notice for the applicant's attention.*

**Councillor Prenter** has written to object to the proposed change of use raising concerns relating to the impact to residential properties within the area in relation to amenity disturbances from noise and odours including health related issues from a takeaway, the area already has parking strain and congestion especially leading up to the hospital, and concerns regarding the proposed bin storage not being suitable.

## 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 2023 (NPPF) and are generally considered to conform. Where non-conformity exists, this is addressed in the Planning Appraisal section below.

## Planning Appraisal

### *Principle*

The permitted planning use of the unit is Class E(a) (retail) under the Town and Country Planning (Use Classes) Order 1987 (as amended). A restaurant use under

Class E(b) would be allowable under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). However, the principle of adding *Sui Generis*(r) (hot food takeaway) for the sale of hot food where consumption of that food is mostly undertaken off the premises is not permitted development and would therefore need planning permission.

Policy R18 of the Local Plan is relevant and details that take-away hot food shops, restaurants, cafes, bars and public houses will be permitted, outside the defined retail core areas, provided specific criteria are met. These criteria include the impact on neighbouring amenity, a concentration of similar uses in the locality having an unacceptable impact, the proposed hours of opening, suitable refuse storage, disposal and collection facilities and the mitigation of noise and the treatment of fumes, smells and parking.

Section 8 (Promoting healthy and safe communities) of the NPPF also emphasises that planning decisions should aim to achieve healthy, inclusive and safe places, and paragraph 92 of the NPPF 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.

The site is located on the corner of Shakespeare Road and Montgomery Road which leads directly up to Medway Maritime Hospital. The unit is currently vacant albeit that it is not clear when it was last vacated. The unit is within a predominately residential area and does not form part of any Local Centre. The site is in close proximity to Canterbury Street and is approximately 400 metres away from the nearest school and as such it does sit on the edge of Medway Council's Hot Food Takeaways in Medway Guidance Notes 2014 in relation to proximity to schools. However, the proposed opening hours have been carefully considered and are proposed to be closed around the school opening and closing hours. In addition, being an isolated commercial unit, it is also not considered that the proposal would result in an over-concentration of such uses due. Therefore, in view of the above no objection is raised in principle.

#### *Design and Amenity*

Paragraph 135f of the NPPF states that achieving well-designed places should include creating a high standard of amenity for existing and future users. Policy BNE2 of the Local Plan expects all development to protect those amenities enjoyed by neighbouring properties.

The NPPF attaches great importance to the design of the built environment. Paragraphs 131 and 135 of the NPPF emphasises the importance of good design

and Policy BNE1 of the Local Plan is a general, criteria-based policy for all development. It seeks appropriate design in relation to the character, appearance and functioning of the built and natural environment.

The extraction system will be contained within the kitchen area, with the extractor exhaust running along the rear to ensure it is positioned as far as possible from the habitable rooms. The proposal also includes minor modifications to the shop front. The existing shop front features timber-framed, single-glazing within the protruding bay. The intention is to retain the current shop front while carrying out necessary repairs and repainting it in the chosen colour red. In regard to design no objection is raised as the shopfront is being retained.

In regard to amenity and specifically the kitchen extract system, the discharge point appears to be reasonable, however a higher level of odour/smoke protection may still be required. The final design of the system will be informed by a suitable odour risk assessment in accordance with the Ricardo EMAQ guidance. In addition to this an acoustic assessment will be required and this will determine if any additional noise mitigation is needed due to the residential flat above.

The applicant is only proposing a delivery service from the premises, and it will not be available for customers to call directly at the premises for a takeaway. This will significantly reduce the impact of the proposal on residential amenity. An appropriate condition limiting the use in this way is recommended. In addition, a condition restricting hours of operation is recommended and the hours are only acceptable if the proposal relates to a delivery service only. A standard customer takeaway service within the hours proposed in this residential area would be unacceptable in residential amenity terms.

Subject to the above-mentioned conditions the proposed take away is acceptable in design and amenity terms and is in accordance with Policies R18, BNE1, and BNE2 of Medway Local Plan 2003 and Paragraphs 131, 135, and 135(f) of the NPPF 2024.

### *Highways*

Policy T1 of the Local Plan relates to the assessment of the highways impact of development and sets out the criteria for assessing the application. Paragraph 116 of the NPPF outlines that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

As the proposal only relates to a delivery hot food take away use and would not permit customers to call directly at the premises, the impact on on-street car parking is significantly reduced. The scheme has also been amended to allow for the gates to the side to be opened via the dropped kerb already in situ to allow access for a delivery driver to collect the food from the premises for deliveries.

In regard to the refuse, 2no. 660litre Eurobins are proposed within the rear terraced area in commercial bins for the use and associated information regarding deliveries only.

### *Bio-Diversity Net Gain (BNG)*

The Planning Practice Guidance on BNG confirms that sites where they will not impact on priority habitat or more than 25sqm of on-site habitat are exempt. The proposal does not appear to impact on priority habitat or more than 25sqm of on-site habitat. It would appear that the application is subject to the de minimis exemption being below the 25sqm of existing onsite habitat and so is exempt under the Biodiversity Gain Requirements (Exemptions) Regulations 2023.

### **Conclusions and Reasons for Approval**

The proposal is for minor changes to the appearance of the building along with the change of use from Class E to Sui Generis for a delivery service hot food take away use only. It is considered that such a use, with the minor improvements to the shop front, can be undertaken in a manner that is acceptable in design, amenity and highway terms and is therefore, in accordance with Policies, R18, BNE1, BNE2, T1 and T13 of the Local Plan and paragraphs 8, 92, 116, 131 and 135 and 135(f) 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 on Medway Council's Website <https://publicaccess1.medway.gov.uk/online-applications/>