

## REPORT SUMMARY

<b>REFERENCE NO:</b> - 22/501684/FULL		
<b>APPLICATION PROPOSAL:</b> Change of Use from a Shop (Class E) to a hot food takeaway (Sui Generis) and installation of a flue.		
<b>ADDRESS:</b> 3 The Parade Staplehurst Tonbridge Kent TN12 0LA		
<b>RECOMMENDATION:</b> GRANT PLANNING PERMISSION subject to planning conditions		
<b>SUMMARY OF REASONS FOR RECOMMENDATION FOR APPROVAL:</b> The application property is currently vacant and there is no objection to the loss of the existing use. The unit could be used as a café or restaurant without the need for planning permission and would be unrestricted in terms of planning conditions. The need for permission provides an opportunity to reduce the potential impact of the use with planning conditions.  The building is in a sustainable district centre location that benefits for nearby residents with a number of facilities in easy walking distance, also linked to the location and proximity to the high street there is a certain level of noise and activity. In the vicinity of the site there are also existing uses with similar opening hours.  The proposed ventilation equipment is mostly located internally thereby reducing visual and amenity impact. There are no issues raised in relation to the design and the ventilation equipment with a planning condition relating to future maintenance.  The parade of shops where the site has a dedicated parking court to the front with parking to the rear for residents. The traffic and short term parking generated by the use will not a severe impact on the highway network.		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Call in from Cllr Perry for the reasons set out at paragraph 5.01 below.		
<b>WARD:</b> Staplehurst	<b>PARISH:</b> Staplehurst	<b>APPLICANT/AGENT:</b> 5AB Group Ltd Cadscapes Ltd
<b>CASE OFFICER:</b> Douglas Wright	<b>VALIDATION DATE:</b> 11/04/2022	<b>DECISION DUE DATE:</b> 01/09/2022
<b>ADVERTISED AS A DEPARTURE:</b> No		

### Relevant planning history

- 2017 – 2019 approved applications relating to signage and installation of a new ATM (17/504344/FULL, 17/504345/ADV, 19/502610/FULL and 19/502611/ADV)
- 1990 -1993 approved applications for new signage and shopfront (90/0363, 90/0362 and 93/1293)

## **1.0 DESCRIPTION OF SITE**

- 1.01 The application site premises are in a three-storey building with a single storey flat roof element to the rear.
- 1.02 The ground floor has commercial uses (Subway, Greggs and Corals Bookmakers) and residential accommodation at first and second floor levels. The application unit is currently vacant and was previously used as a wine shop.
- 1.03 The application building accessed from the north side of Offens Drive is set back from the High Street behind a public parking court (circa 16 spaces). Staplehurst Library is located to the north. Further car parking is available to the side of the building in Offens Drive and to the rear of the building off the access to the health centre.
- 1.04 The building and car parking arrangements to the north of Offens Drive are mirrored to the south of Offens Drive with ground floor commercial uses including Spar, Mc Colls, Jumeira Indian restaurant and Chequers Fish Bar with residential accommodation at first and second floor levels.
- 1.05 In the adopted Local Plan, the site is located in the designated Rural Service Centre of Staplehurst and in the designated District Shopping Centre boundary. With reference to the neighbourhood plan the site is located in the 'Village Heart'.

### **Front elevation of the existing unit**



## **2.0 PROPOSAL**

- 2.01 The application seeks permission for the change of use of the existing retail unit (vacant wine shop) to form a pizza takeaway (sui generis).

- 2.02 The application also includes the installation of an extraction flue which discharges to the rear elevation. The vent to the ventilation equipment is the only external change to the building.

### **3.0 POLICY AND OTHER CONSIDERATIONS**

- Maidstone Borough Local Plan policies SS1, SP5, SP10, SP21, DM1, DM17, DM18, DM23
- Staplehurst Neighbourhood Plan: VH1
- The National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (NPPG)
- Maidstone Borough Council – Local Plan Review, draft plan for submission (Regulation 22) dated October 2021. - The Regulation 22 draft is a material consideration however weight is limited, as it will be the subject of a future examination in public.

### **4.0 LOCAL REPRESENTATIONS**

- 4.01 Eight responses have been received objecting to the application for the following reasons:
- Noise and disturbance
  - Competition with existing food uses
  - Loss of a shop
  - Parking and traffic

#### **Staplehurst Parish Council**

- 4.02 Support "*Councillors recommend approval to the MBC Planning Officer*".

#### **Cllr Perry**

- 4.03 The application is called in for a committee decision on the following grounds:
- The parade where the application site is located is relatively small and already has a Greggs, a Subway, an Indian Restaurant and a Fish and Chip shop.
  - I am also concerned at the increase in demand on parking spaces.

### **5. CONSULTATIONS**

(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)

#### **Mid Kent Environmental Health**

- 5.01 No objections subject to conditions relating to noise levels, maintenance of ventilation equipment and refuse storage.

### **6.0 APPRAISAL**

- 6.01 The key issues are:
- Loss of the existing use
  - Amenity
  - Parking and traffic

#### **Loss of the existing use**

- 6.02 The application site is located in a Rural Service Centre. Outside the Maidstone Urban Area the Rural Service Centres are the second most sustainable settlement

in the hierarchy to accommodate growth. The site is located in a District Shopping Centre where policy DM17 seeks to maintain and enhance the existing retail function. The site is not located in a primary or secondary shopping frontage.

- 6.03 Policy VH1 of the Staplehurst Neighbourhood Plan seeks to support the retention and enhancement of existing retail and ancillary facilities in the village heart.
- 6.04 Since the adoption of the Local Plan in 2017, major changes have taken place to the operation of the planning use classes system (Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020) and these changes have introduced substantially more flexibility in the use of buildings and the need for planning permission.
- 6.05 These changes include the deletion of the former 'A' use class, so there is no longer a 'retail' use class. The changes mean that a use can change between shops, restaurants, cafés, clinics, crèches, banks, offices, light industrial, indoor sports within the new Use Class E without a need for planning permission.
- 6.06 Whilst a hot food take away does need planning permission (permission is required to change from, or, to any sui generis use – a 'class of its own') the application premises can be used for a variety of non-retail uses without planning permission, including other food uses such as a café or restaurant. These permitted uses could potentially have a greater impact than the current proposal, especially as (unlike the current application) there would be no opportunity to mitigate impact through the use of planning conditions.
- 6.07 The application premises is not located in either a primary or secondary shopping frontage where the Local Plan (as drafted- DM27 and DM28) seeks to restrict non-planning use class A1 retail uses. In the event that the site was in a primary or secondary frontage, the changes to the use class system have removed the need to change from a retail use to a restaurant or café.
- 6.08 The application site is located in the District Centre that provides a wide range of different retail and other uses within easy walking distance. The proposed use is as a pizza takeaway and this use will provide greater variety in the food offering in Staplehurst.
- 6.09 On the basis of the permitted changes to other uses and the other uses within the District Centre, it is concluded that there are no grounds to refuse planning permission in terms of the loss of the most recent use of the vacant premises as a retail wine shop.

### **Amenity**

- 6.10 Local Plan policy DM1 advises that proposals which would create high quality design and meet a number of stated criteria will be permitted. These criteria include respecting the amenities of occupiers of neighbouring properties and uses by ensuring that development does not result in excessive noise, vibration, odour, air pollution, or activity or vehicular movements. There is a requirement to incorporate measures for the adequate storage of waste.
- 6.11 The proposal would consist of a new takeaway business, which would seek opening times of would be 1600hrs to 2200hrs Mondays to Fridays and 1200hrs to 2200hrs on Saturdays and 1200hrs to 2100hrs on Sundays.

- 6.12 In comparison, Jumeira Indian Restaurant and Takeaway opens later on every day of the week (1700hrs to 2230hrs Sundays to Thursdays, whilst Fridays and Saturdays are open till 2300hrs). The Spar is also open till 2200hrs every day. Chequers Fish Bar has similar opening hours, open to 2200hrs every day, other than Sunday when it is closed.
- 6.13 The application site is located adjacent to Staplehurst High Street (A229) and this location will have existing background noise levels generated by traffic and general activity in the street. Visitors to existing nearby early night time uses will also generate more localised noise with car doors closing and general activity.
- 6.14 Whilst it is accepted that the proposed use would be likely to increase existing activity, the increase in activity is not sufficient to refuse planning permission given the site context. The environmental health officer has raised no issues with the proposed hours that the takeaway will operate. A planning condition is recommended to restrict operation to the stated hours.
- 6.15 The majority of food related uses require some form of building ventilation, and this ventilation is designed in relation to the type of cooking that is proposed and the physical constraints of the building. In this case, the majority of the ventilation ducting is located within the building running along the length of the single storey rear part of the building with the external vent on the rear elevation. The ventilation equipment has been assessed by the environmental health officer and no issues have been raised in terms of noise and odours. In line with the environmental health officer advice a condition is recommended in relation the future maintenance of the equipment.
- 6.16 In summary the visual impact of the ventilation equipment is minimal (see rear elevation drawing below), the specification and design of the ventilation equipment are acceptable, and the hours of operation are restricted by condition. The proposal is found to be acceptable in relation to the potential impact on amenity.

**Elevation drawings (only external building change highlighted)**



### **Parking and traffic**

- 6.17 Staplehurst is recognised as being in the second tier of accessible and sustainable locations (Rural Service Centre) in the borough only behind the Maidstone Urban Area in the hierarchy. The application site within the Rural Service Centre is an existing purpose-built commercial unit with an adjacent designated car parking court. Car parking for the residential uses above the application property are provided at the rear of the building. Other commercial, retail, health and leisure uses are found nearby.
- 6.18 It is accepted that the proposed use will generate traffic, however the level of traffic will not be significantly different than other uses that would be permitted in the premises without a need for planning permission. The site has a parking court directly adjacent to the unit and given the nature of the location there is also likely to be customers arriving on foot and also linked vehicle trips with other nearby commercial uses and residential accommodation.
- 6.19 NPPF paragraph 111 states "*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*". It is found that there would not be any severe impact on the highway or local parking demand as a result of this proposal.

### **Other matters**

- 6.20 Consultation response have referred to the potential impact on other local businesses. Competition is not an issue that is considered in the planning system.

## **7. CONCLUSION**

- 7.01 The application property is currently vacant and there is no objection to the loss of the existing use. The unit could be used as a café or restaurant without the need for planning permission and would therefore be unrestricted in terms of planning conditions. The need for permission provides an opportunity to reduce the potential impact of the use with planning conditions.
- 7.02 The application property is in a purpose-built block with commercial uses at ground floor with residential accommodation above. The building is in a sustainable district centre location that benefits for nearby residents with a number of facilities in easy walking distance, also linked to the location and proximity to the high street there is a certain level of noise and activity. In the vicinity of the site there are also existing uses with similar opening hours.
- 7.03 The proposed ventilation equipment is mostly located internally thereby reducing visual and amenity impact. There are no issues raised in relation to the design and the ventilation equipment with a planning condition relating to future maintenance.
- 7.04 The parade of shops where the site has a dedicated parking court to the front with parking to the rear for residents. The traffic and short term parking generated by the use will not a severe impact on the highway network.
- 7.05 The proposal is in accordance with adopted policy and the recommendation is to grant planning permission subject to conditions.

**8. RECOMMENDATION**

GRANT planning permission subject to the following conditions:

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2) The development hereby approved shall be carried out in accordance with the following approved plans and documents:
  - PA\_22\_029\_001 - Existing and Proposed Plan and Elevations
  - PA\_22\_029\_002 Rev A - Site Location and Block Plan
  - Planning Statement
  - UB 042 500EV sileo Multibox
  - Sitesafe Discarb Units
  - Type 2 Premium Baffle Filter
  - Vline Panel FilterReason: in the interests of proper planning.
- 3) No activity in connection with the use hereby permitted shall be carried out outside 1600hrs to 2200hrs Mondays to Fridays and 1200hrs to 2200hrs on Saturdays and 1200hrs to 2100hrs on Sundays.  
Reason: To safeguard the enjoyment of their properties by adjoining residential occupiers.
- 4) The proposed extraction system and plant shall be installed in accordance with the supporting information provided with the application prior to first use of the premises hereby permitted and shall thereafter be maintained in accordance with the manufacturer and operating instructions.  
Reason: In the interests of residential amenity.
- 5) The rating level of noise emitted from the proposed plant and equipment to be installed on the site (determined using the guidance of BS 4142 : 2014 Rating for industrial noise affecting mixed residential and Industrial areas) shall be 5dB below the existing measured background noise level LA90, T. In exceptional circumstances, such as areas with a very low background or where assessment penalties total above 5 the applicant's consultants should contact the Environmental Protection Team to agree a site-specific target level.  
Reason: In the interests of amenity.
- 6) Prior to the commencement of the approved use a scheme and maintenance schedule for the extraction and treatment of fumes and odours generated from cooking or any other activity undertaken on the premises, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be designed in accordance with the DEFRA publication Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems January 2005. The approved equipment, plant or process shall be installed or in place prior to the first operation of the premises and shall thereafter be operated and retained in compliance with the approved scheme.  
Reason: In the interests of amenity.
- 7) Prior to the commencement of the approved use facilities for (a) the storage and screening of refuse bins, and (b) the collection of refuse bins, shall be in place that are in accordance with details that have previously been submitted to and approved by the Local Planning Authority. These details will be maintained as such thereafter.  
Reason: In the interests of amenity.

**INFORMATIVES**

1. Advertisements: The applicant is advised that any new signage may require the benefit of separate advertisement consent, see advice on the following website: <https://www.gov.uk/government/publications/outdoor-advertisements-and-signs-a-guide-for-advertisers>
2. External changes: The applicant is advised that external changes to the unit such as a new shopfront are likely to require the benefit of a separate planning permission.
3. Radon: The applicant is advised that the site is in a radon affected area with a 3-5% probability of elevated radon concentrations. If the probability of exceeding the action level is 3% or more in England and Wales, basic preventative measures are required in new houses, extensions, conversions and refurbishments - British Research Establishment code BR211 (2015) and The Building Regulations 2010 England (amendments 2013). If the probability rises to 10% or more, provision for further preventative measures are required in new houses. Test(s) for the presence of radon gas are recommended to be carried out. Further information can be obtained from Public Health England.
4. Asbestos: The applicant is advised that adequate and suitable measures should be carried out for the minimisation of asbestos fibres during any works, so as to prevent airborne fibres from affecting workers carrying out the work, and nearby properties. Only contractors licensed by the Health and Safety Executive should be employed. Any redundant materials removed from the site should be transported by a registered waste carrier and disposed of at an appropriate legal tipping site.
5. Construction: The applicant is advised of the Mid Kent Environmental Code of Development Practice produced by the Mid Kent Environmental Protection Team (shared service between Maidstone Tunbridge Wells and Swale). This guidance is available on the Tunbridge Wells website at the following link: <https://tunbridgewells.gov.uk/environment/environmental-code-of-development-practice>