

REPORT SUMMARY

REFERENCE NO: - 23/501293/FULL		
APPLICATION PROPOSAL: Change of use of land for the siting of mobile burger van and canopy for the provision of hot food on the forecourt (retrospective).		
ADDRESS: The Coach Yard Old Ashford Road Lenham Kent ME17 2DG		
RECOMMENDATION: GRANT PLANNING PERMISSION subject to conditions		
SUMMARY OF REASONS FOR RECOMMENDATION: There is no policy support in the Adopted Local Plan for uses of this kind in countryside locations such as this, however, material considerations discussed in this report justify a departure from the Local Plan. The proposal given its scale and location would not be harmful to the character and visual amenity of the site and the local area in general. No significant adverse effect is identified to the living conditions of occupiers of neighboring properties through noise, disturbance, or smells, and subject to conditions the scheme would not impose harm to the amenity of occupiers of neighbouring houses. The scheme would not result in a significant material increase in off-street parking demand in the locality or give rise to added congestion on the local road network, which would cause irritation and inconvenience to the local residents.		
REASON FOR REFERRAL TO COMMITTEE: The application has been called in by Lenham Parish council. The reasons for committee referral are available in section 4 of this report.		
WARD: Harrietsham And Lenham	PARISH/TOWN COUNCIL: Lenham	APPLICANT: Mrs Nertila Sinani AGENT: TSJ Drawings
CASE OFFICER: Francis Amekor	VALIDATION DATE: 24/05/23	DECISION DUE DATE: 27/10/23
ADVERTISED AS A DEPARTURE: Yes		

Relevant planning history

- 23/501294/FULL Retrospective application for the erection of a tyre bay building and the laying of hardstanding. Approved 29.09.2023 (resolution to approve from committee on the 21 September 2023)
- 18/501630/FULL Change of use to general commercial use and car wash/valeting, with retention and erection of wash down area and valeting canopies together with ancillary structures (part retrospective). Refused 20.06.2018
- 18/505045/FULL Change of use to general commercial use and car wash/valeting, with retention and erection of wash down area and valeting canopies together with ancillary structures and drainage, including plant room and sealed drainage system. Resubmission of 18/501630/FULL) Approved 28.11.2018
- 17/504828/FULL Retrospective application for change of use to a general commercial use and a car wash. Refused 05.01.2018
- 99/1583 Retrospective advertisement consent for a non-illuminated free-standing sign as shown on site location plan and photographs received on 30/09/99. Approved 6.12.1999

- 75/0405 Formation of hardstanding and use of land for the parking of motor coaches, Approved 17.02.1977
- 79/0040 Single storey building for garaging and servicing coaches. Approved 19.03.1981
- 83/0185 Siting of residential caravan for security reasons. Approved 13.05.1983

MAIN REPORT

1. DESCRIPTION OF SITE

- 1.01 The application relates to the premises of a former coach travel company located on the north side of Old Ashford Road. The site is approximately 50 metres east of the built confines and settlement of Lenham, a designated as a Rural Service Centre in the Adopted Maidstone Borough Local Plan (2017). The site has permission for use as car wash and is occupied by canopies and various utility buildings associated with that use.
- 1.02 The wider area is identified in the Maidstone Landscape Character Assessment as falling within the East Lenham Vale Landscape Character Area which is described as being in 'Good' condition and of 'High' sensitivity with guidelines to 'Conserve'. The site also falls within a minerals safeguarding area.
- 1.03 The southern site boundary fronts Old Ashford Road. To the south west of the application site are two-storey semi-detached residential properties. The north east site boundary abuts warehouses that forms a part of the adjacent industrial estate.
- 1.04 The site has an established gated vehicular access from Old Ashford Road. The front boundary of the application site has a metal post fence and large areas of hardstanding associated with the former use and is very urban/commercial in appearance.
- 1.05 The site plan submitted with that previous application under reference number 18/505045/FULL (change of use to general commercial use and car wash/valeting) showing the locations of the canopies, utility buildings and car parking spaces is depicted below.

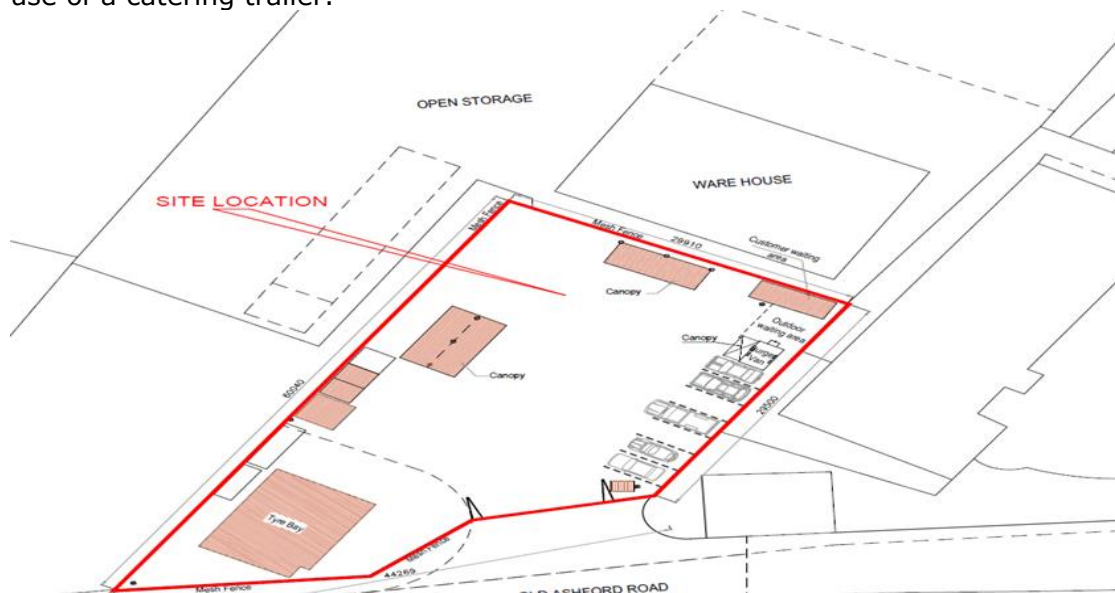


Proposed Site Plan for application ref: 18/505045/FULL

2. PROPOSAL

- 2.01 The proposal is a retrospective application to change of use of a small section of the forecourt for the stationing of mobile burger van and a canopy for preparation and retailing of hot food.

- 2.02 The burger van is positioned between the customer outdoor waiting area and car parking spaces in the north eastern part of the site. The burger van and attached canopy are 4 metres in width and 3.8 metres depth, rising approximately 3 metres above ground level.
- 2.03 The burger van and canopy would be used for preparation and retailing hot food for consumption by visiting customers, at the site or away from the site with the use of a catering trailer.



Proposed site plan showing the location of the burger van and canopy

3. POLICY AND OTHER CONSIDERATIONS

Development Plan: Maidstone Local Plan 2017:

- Policy SS1 – Maidstone Borough Spatial Strategy
- Policy SP17 – Countryside
- Policy SP21 – Economic Development
- Policy DM1 – Principle of Good Design
- Policy DM8 – External Lighting
- Policy DM23 – Parking standards

Emerging Draft Policy: Maidstone Draft Local Plan

The Regulation 22 Local Plan Review (LPR) submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is therefore a material consideration and attracts some weight. The LPR has been through Stage 1 and 2 Hearings and the main modifications the Inspector considers are required to make it sound are out to public consultation, so it is at an advanced stage. However, responses to the consultation need to be considered by the Inspector along with him producing his Final Report so the LPR is considered to attract moderate weight at the current time. The relevant policies are as follows:

- Policy LPRSP9 - Development in the Countryside
- Policy LPRSP11 - Economic Development
- Policy LPRSP15 – Principles of Good Design
- Policy LPRTRA4 – Parking
- Policy LPRQ&D 2 - External lighting

The National Planning Policy Framework (NPPF) (2023):

- Section 2 – Achieving Sustainable Development
- Section 4 – Decision Making

Section 12 – Achieving well Designed Places

Supplementary Planning Documents

Neighbourhood Plan Lenham Policies: Policy D1 – Quality Design

Kent Waste and Minerals Plan (amended 2020):

National Planning Practice Guidance (NPPG):

Maidstone Landscape Character Assessment 2012 (Updated 2013)

SPG 4 Kent Vehicle Parking Standards July 2006

4. LOCAL REPRESENTATIONS

4.1 Local residents:

2 representations received objecting to the application for the following (summarised) reasons:

- Increase traffic queues on Old Ashford Road and associated highway safety
- Increase in noise and disturbance and general anti-social behaviour.
- The proposal would cause overdevelopment and overcrowding of the site
- Adverse effect from cooking smells.
- There is already a takeaway in Lenham.
- It would increase inappropriate parking on Old Ashford Road outside the premises
- Increase in litter and vermin.

4.2 Lenham Parish Council:

Objection to the proposals for the following reasons:

- The proposal would result in anti-social behaviour
- There is no provision for WCs which will presumably follow.
- There are no provisions for waste or litter.
- This is another example of a creeping development.
- There is no pavement access to the site for pedestrians walking from the Village.
- Noise and smells issues for the neighbours due to insufficient extraction/filtration.
- The comments of the Environmental Protection Team are inaccurate.
- The proposals would cause both overdevelopment and overcrowding of the site.
- It would result in spill over parking on Old Ashford Road
- If minded to approve, the Parish Council request committee determination.

5. CONSULTATIONS

5.01 Environmental Health

No objection. Commented that 'there are no sensitive premises directly adjacent to the site and am satisfied that the proposed use will have a negligible impact.

5.02 KCC Highways and Transport

No objection. The development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements.

6. APPRAISAL

The key issues are:

- Countryside location and policy SP17
- Character and appearance
- Economic development in rural areas.
- Residential amenity
- Parking and highway safety

Countryside location and policy SP17

6.01 The application site is in the countryside and the starting point for assessing all applications in the countryside is Local Plan Policy SP17. Policy SP17 of the Adopted

Local Plan states that development proposals in the countryside will only be permitted where:

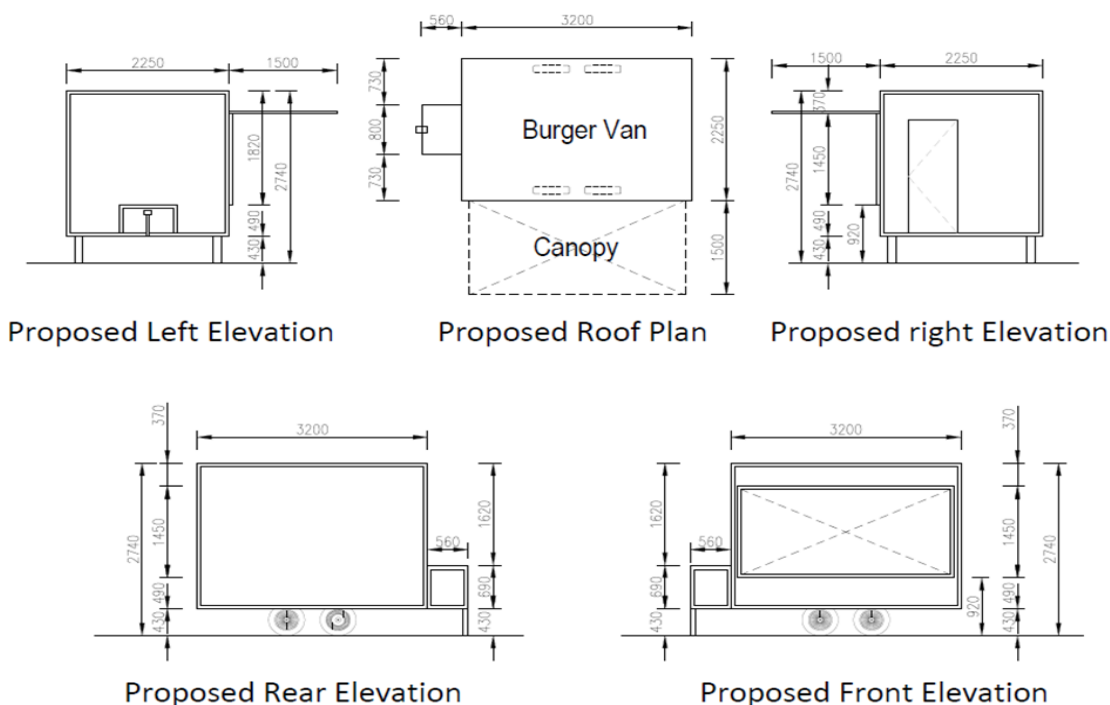
- a) there is no harm to local character and appearance, and
- b) they accord with other Local Plan policies.

- 6.02 Policy SP17 does not specify an acceptable level of harm to local character and appearance and all proposals in the countryside are likely to result in some degree of harm. In this context all development outside the designated settlements does not accord with this part of SP17.
- 6.03 In certain circumstances where there is locational need for development (equestrian, rural worker dwelling agricultural buildings etc) other Local Plan policies permit development in the countryside subject to listed criteria. If development accords with one of these other Local Plan policies, this compliance I weighed against the harm caused to character and appearance with a proposal found in accordance with policy SP17 overall.
- 6.04 The proposal will result in harm to the character and appearance of the countryside. The burger van and canopy are not connected with the established use of the site and there are no specific polices in the Local Plan relating to uses of this kind in the countryside. The recommendation to grant planning permission would therefore be a departure from the adopted Local Plan.
- 6.05 The National Planning Policy Framework (NPPF) highlights that the planning system is plan-led. The NPPF reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which require by law that planning applications "*must be determined in accordance with the development plan, unless material considerations indicate otherwise*".
- 6.06 Material considerations in this case include the degree of countryside harm including the site context and the location of the burger van and canopy on an established commercial site with permission for use as car wash and retention of the tyre bay building. Other material considerations relate to economic development in the countryside and residential amenity. These material considerations and other relevant issues are assessed below.

Character and appearance

- 6.07 Policy DM1 of the Local Plan (2017) advises that proposals should create a high-quality design which responds positively to and where possible enhance the character of the local area. Policy DM30 of the Local Plan states that new development should maintain, or where possible, enhance the local distinctiveness of an area.
- 6.08 The burger and canopy are a relatively small structure approximately 3 metres high. It is positioned within a site that is enclosed by metal fencing with an industrial appearance. The site is occupied by canopies and utility buildings associated with the existing hand car wash use, with most of the site covered in hardstanding.
- 6.09 Lenham Parish Council and residents are concerned the proposals would cause overdevelopment and overcrowding of the site. As indicated above, the site has an existing commercial character and whilst the burger van and canopy undoubtedly increase the built form at the site (and impact on appearance), due to the small scale of the burger van and canopy the proposal will not result in over development or overcrowding of the site. The burger van and canopy are viewed within the context and against the backdrop of the existing commercial site.

6.10 In terms of the effect of the use on the character of the site and the local area, the level of activity generated by this use (preparing and retailing of food for consumption by visiting customers, at the site or away from the site with a catering trailer) would not be so substantial as to adversely affect the character of the site or the local area.



Proposed elevations.

6.11 For the reasons outlined above, the proposals would comply with the requirements set out in Policy DM1, DM30 of the Maidstone Borough Local Plan, and paragraph 126 of the NPPF (2023) which jointly seeks to ensure all development are well designed to protect and enhance the special character and distinctiveness of the area in which it is situated.

Economic development in rural areas.

6.12 Government guidance in the National Planning Policy Framework (NPPF 2023) states that planning decisions should enable the sustainable growth and expansion of all types of business in rural areas, through conversion of existing buildings and well-designed new buildings.

6.13 The NPPF (2023) at paragraph 81 directs that significant weight should be placed on the need to support economic growth and productivity, considering both local business needs and wider opportunities for development. At paragraph 85, it identifies that planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport.

6.14 Policy SP21 of the adopted Maidstone Borough Local Plan is supportive of proposals for the expansion of existing economic development premises in the countryside, provided the scale and impact of the development is appropriate for its countryside location.

- 6.15 The proposal although on a small scale would support the objectives of the NPPF (2023) to support economic growth and given its location within an existing commercial premises it is sensitive to its surroundings, would not have an unacceptable impact on local roads.

Residential amenity

- 6.16 Policy DM1 of the adopted Local Plan advises that proposals will be permitted where they “respect the amenities of occupiers of neighbouring properties...” and this includes considering the potential impact from “...excessive noise, vibration, odour, air pollution, activity or vehicular movements, overlooking or visual intrusion, and that the built form would not result in an unacceptable loss of privacy or light enjoyed by the occupiers of nearby properties”.
- 6.17 The closest neighbouring properties are approximately 30m away to the west and south of the application site. The small-scale nature of the application, the enclosure of the site, and the fact that it would not attract significant numbers of customers would reduce the potential for noise nuisance from the burger van.
- 6.18 Given the nature of the proposal it would not generate significant levels of smells and odours, and imposition of a planning condition on odour extraction would not be effective. Moreover, the separation distance from the neighbouring houses and the scale and nature of the scheme means the impact on these houses is acceptable. The Environmental Health team found no reason to object based on amenity impact.
- 6.19 A planning condition is recommended to restrict opening hours (9am till 6pm Monday to Saturday and 10am to 4pm on Sunday). Moreover, any excessive noise that occurred from the site that could lead to a detrimental effect on health would be subject to other regulatory legislation controlled by Environmental Health. Operating within these restrictions would not lead to any significant harm to the living conditions of neighbouring residents.
- 6.20 On this basis, the proposals would not be harmful to the living conditions of occupiers of neighbouring properties through noise, disturbance, or smells. It would comply with policy DM1 of the Maidstone Borough Local Plan.

Highways Parking and highway safety

- 6.21 Policy DM23 of the Local Plan and supplementary planning guidance sets out the parking standards for the Borough. The policy adopts a flexible approach to minimum and maximum parking standards to reflect local circumstances and the availability of alternative modes of transport to the private car.
- 6.22 The application site consists of a significant amount of hardstanding and there would be adequate space to park vehicles on site. Considering the scale of the proposal and notwithstanding the comments from residents, the scheme would not result in a significant material increase in off-street parking demand in the locality or give rise to added congestion on the local road network. The proposals would comply with the requirements of policy DM23 and the SPG.

PUBLIC SECTOR EQUALITY DUTY

- 6.23 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

7. CONCLUSION

- 7.01 The proposal will result in harm to the character and appearance of the countryside and there are no Local Plan policies that directly support the application. The application is a departure from the adopted Local Plan.

- 7.02 The National Planning Policy Framework (NPPF) reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which require by law that planning applications "*must be determined in accordance with the development plan, unless material considerations indicate otherwise*".
- 7.03 The proposal is acceptable in relation to the minimal level of harm that will be caused to the character and appearance of this rural area. Whilst not supported by adopted policies in this location, the proposal will comply with the general requirements of Local Plan policy DM30, and paragraph 126 of the NPPF (2023) which jointly seek to ensure that all development is well designed to protect local character.
- 7.04 With recommended conditions, the proposal is acceptable in relation to the impact on neighbour's amenity including through noise, disturbance, or smells. The application complies with the general requirements of policy DM1 of the Maidstone Borough Local Plan that seeks to protect residential amenity. The application would not result in transport or traffic harm that would justify the refusal of planning permission.
- 7.05 Whilst a departure from the local plan it is concluded that these material considerations indicate that planning permission should be approved.

8. RECOMMENDATION GRANT planning permission subject to the following conditions with delegated powers to the Head of Planning and Development to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

- 1) The development shall be carried out in accordance with the following approved plans and documents.
Drawing Number: 23/1210/HD/01 Rev C (Existing Site Location and Block Plans)
Drawing Number: 23/1210/HD/11 Rev C (Proposed Site Location and Block Plan)
Drawing Number: 23/1210/HD/13/1 Rev B (Proposed Burger Van Plan and Elevations)
Drawing Number: 23/1210/HD/02 Rev D (Existing Ground Floor Plan)
Reason: To ensure the development is carried out to an acceptable visual standard.
- 2) The burger van hereby approved shall not be open for customer business outside the hours of 0900hs-1800hrs Monday to Saturday and 1000hrs – 1600hrs on Sundays and Bank Holidays.
Reason: To safeguard the enjoyment of their properties by adjoining residential occupiers
- 3) Any external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. The submitted details shall be in accordance with the Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2011 (and any subsequent revisions) and follow the recommendations within Bat Conservation Trust's 'Guidance Note 8 Bats and Artificial Lighting', and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter.
Reason: To safeguard the character and appearance of the countryside and in the interests of residential amenity and wildlife.

- 4) The use hereby permitted shall cease and all structures, equipment, and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within 6 weeks of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
- i) Within 6 weeks of the date of this decision a Site Development Scheme, hereafter referred to as the 'Scheme', shall have been submitted for the written approval of the Local Planning Authority. The Scheme shall include details of:
 - a) The extent of hardstanding.
 - b) Existing external lighting on the boundary of and within the site.
 - c) Details of existing landscaping and details of soft landscape enhancements.
 - d) Details of the measures to enhance biodiversity at the site, specifically bird boxes and other habitats installed around the site boundaries; and,
 - e) A waste and refuse strategy to include measures to reduce waste from the business and measures to reduce litter generated by customers and litter collection.
 - f) A timetable for implementation of the scheme including a) to e) with all details implemented in accordance with the agreed timetable and all details and measures retained for the lifetime of the development.
 - ii) Within 11 months of the date of this decision the Scheme shall have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve the Scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Scheme shall have been approved by the Secretary of State.
 - iv) The approved Scheme shall have been carried out and completed in accordance with the approved timetable and thereafter maintained and retained as approved. Reason: To ensure the visual amenity, character, and appearance of the open countryside location.
- 5) All planting, seeding and turfing specified in the approved landscape details shall be completed by the end of the first planting season (October to February). Any seeding or turfing which fails to establish or any trees or plants which, within five years from first planting, are removed, die or become so seriously damaged or diseased that their long term amenity value has been adversely affected shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme. Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.