

APPLICATION: MA/12/0023 Date: 7 January 2012 Received: 6 January 2012

APPLICANT: Mr Wahidulla Masoudi

LOCATION: 34, HIGH STREET, MAIDSTONE, KENT, ME14 1JH

PARISH: Maidstone

PROPOSAL: Variation of condition 3 of planning permission MA/11/1147 (any activity (including cleaning) in connection with the use of the premises shall only take place between the hours of 9am and midnight on Mondays to Saturdays and 10am to 11:30pm on Sundays, Bank and Public Holidays) to have operating hours between 11:00am-01:00am Mondays-Thursdays and Sundays; and 11:00am-03:00am Fridays and Saturdays as shown on application form received 06/01/12.

AGENDA DATE: 8th March 2012

CASE OFFICER: Kathryn Altieri

The recommendation for this application is being reported to Committee for decision because:

- The Council has a land ownership interest.

### **1. POLICIES**

- Maidstone Borough-Wide Local Plan 2000: R1, R3, R9, R17
- South East Plan 2009: CC6, BE1, BE6, NRM10
- Village Design Statement: N/A
- Government Policy: PPS1, PPS4, PPS5, PPG24

### **2. HISTORY (1974+)**

- MA/11/1147 - Change of use from A1 (retail) to A5 (hot food takeaway) and installation of extract system – approved/granted with conditions
- MA/04/0388 - An application for advertisement consent for a non-illuminated fascia advertisement on the front elevation – approved/granted with conditions

### **3. CONSULTATIONS**

- Conservation Officer: Raises no objections;

*"The proposal will have no significant impact on the character of the conservation area."*

Environmental Health Officer: Raises no objections;

*"This is an application for the variation of the opening hours originally described in condition 3 of MA/11/1147. It might seem at first sight to be a presumptuous application, especially as the business has not officially opened yet. However, there are a number of similar premises very close by that have similar opening, and in some cases, longer hours. Therefore I can have little option but to agree to these suggested hours. Any permission, however, does not give the proprietor licence to cause nuisance from odours or from waste materials because of being open for longer hours. The issue of waste is particularly relevant at this locality, as there is a narrow passageway running alongside the premises to a number of flats to the rear; these types of localities are prone to littering. I understand that details of waste storage facilities are still outstanding; this must be resolved before the premises can open under the previous application."*

#### **4. REPRESENTATIONS**

- No responses

#### **5. CONSIDERATIONS**

##### **5.1 Site Description**

5.1.1 The application site relates to a general rectangular shaped plot that is occupied by an end of terrace, two storey building that fronts onto the High Street, some 40m to the west of the junction with Mill Street. The site was previously a furniture shop but has recently been given planning permission for a change of use to A5 (takeaway) use. This building is largely glazed to the front and there is a vehicle access along its south-western flank that leads to a car park at the rear. The properties either side of the application site are Grade II listed and the site does fall within the Maidstone Centre Conservation Area. The surrounding area largely consists of differently styled buildings with varying commercial and residential uses and to the rear of the site is a private car park with residential flats on its eastern (3-5 Medway Street) and western (Tumim House) edges.

5.1.2 The application site is also in the 'tertiary town centre' area, as designated by the Maidstone Borough-Wide Local Plan 2000 (MBWLP).

##### **5.2 Proposal**

5.2.1 Planning approval MA/11/1149 was for the change of use of 34 High Street from A1 (retail) use to A5 (hot food takeaway) use, with the ground floor being the service area, with no seating except for a bar along the side wall and where the food is prepared. The first floor would be a staff area. This approval also included the installation of an extraction system. Condition 3 of this permission states;

*"Any activity (including cleaning) in connection with the use of the premises shall only take place between the hours of 9am and midnight on Mondays to Saturdays and 10am to 11:30pm on Sundays, Bank and Public Holidays.*

*Reason: To safeguard the enjoyment of their properties by nearby residential occupiers in accordance with policies R9 and R17 of the Maidstone Borough-Wide Local Plan 2000, policy NRM10 of the South East Plan 2009, PPS1 and PPS5."*

5.2.2 To be more competitive, the applicant seeks to change these operating hours to as follows;

- 11am - 1am – Mondays to Thursdays and Sundays
- 11am – 3am – Fridays and Saturdays

### **5.3 Principle of Development**

5.3.1 The principle for 34 High Street to be used as a takeaway has already been approved under planning permission MA/11/1147. This application is to consider the impact of the proposed change of operation hours only.

5.3.2 The most relevant policies under the Maidstone Borough-Wide Local Plan 2000 relating to the 'tertiary town centre' area and a takeaway outlet are policies R9 and R17. I will consider this application against the criteria set out in both of these policies.

Policy R9 states;

*WITHIN THE TERTIARY TOWN CENTRE AREAS, AS DEFINED ON THE PROPOSALS MAP, THE BOROUGH COUNCIL WILL PERMIT A VARIETY OF USES APPROPRIATE TOWARDS THE EDGE OF THE TOWN CENTRE PROVIDED THAT THE FOLLOWING CRITERIA ARE MET:*

*(1) THE PROPOSED USE(S) CONTRIBUTES TO THE VITALITY AND VIABILITY OF THE AREAS; AND*

*(2) THERE IS NO DETRIMENTAL IMPACT ON NEIGHBOURING LAND USES OR RESIDENTIAL AMENITY; AND*

*(3) ANY PARKING PROVISION IS IN CONFORMITY WITH THE LOCAL PLAN STRATEGY; AND*

*(4) THERE IS NO LOSS OF RESIDENTIAL ACCOMMODATION OR ACCESS TO RESIDENTIAL ACCOMMODATION.*

*THESE USES INCLUDE CLASS A1 (SHOPS), CLASS A2 (FINANCIAL AND PROFESSIONAL SERVICES), CLASS A3 (FOOD AND DRINK), CLASS C1 (HOTELS*

AND GUEST HOUSES), CLASS C3 (DWELLING HOUSES), D1 (NON-RESIDENTIAL INSTITUTIONS) AND CLASS D2 (ASSEMBLY AND LEISURE).

Policy R17 states;

*The Council will permit hot food shops, restaurants, cafes, bars and public houses outside the core shopping area to which policy R7 applies, provided that the following criteria are met:*

*(1) That there is no detrimental effect, by reason of hours of opening, fumes and smells or noise and disturbance, to nearby or adjoining uses and especially residential amenity; And*

*(1) That the effect of one or a concentration of such uses would not be detrimental to the vitality and viability of any district or local centres within which they may be located.*

#### **5.4 Residential Amenity**

5.4.1 The main issue to consider under this application is whether or not the proposed operational hours would result in unacceptable harm to the amenity of the nearby residential properties. There are residential flats above several properties along this stretch of the High Street (including 32 and 36 High Street) and there are flats to the rear of the site some 30m away (3-5 Medway Street and Tumim House).

5.4.2 Below are examples of the licensed hours of operation of other takeaway shops within Maidstone town centre;

##### **High Street**

*Hot 4 You: 11:00am – 04:00am (Monday–Saturday) & 11:00am – 23:00pm (Sundays)*

*Wok Inn: 11:00am – 05:00am (Monday – Sunday)*

*Maidstone Grill: Does have a licence to operate for 24hrs, 7 days a week*

##### **Bank Street**

*Kent Best Kebab: 23:00pm – 05:00am (Monday – Sunday)*

##### **Gabriels Hill**

*Atillas Kebab House: 12:00pm – 03:00am (Sunday – Thursday) & 12:00pm – 05:00am (Friday & Saturday)*

*Britannic Fish Bar: 07:00am – 04:00am daily*

5.4.3 I do not consider there to be an over proliferation of takeaways and as shown, other takeaways in the town do have operating hours that extend into the early hours of the morning. As well as the existing late night takeaways, there is the

footfall and activity associated with the nightclubs of Maidstone. Here are examples of the licensed opening hours for some of these clubs;

*Chicago Rock*: 11:00am – 03:00am (Monday – Sunday)

*Players*: 12:00am – 03:00am (Monday – Sunday)

*Strawberry Moons*: 11:00am – 05:00am (Monday – Sunday)

*Banks*: 10:00am – 01:00am (Sundays), 07:00am – 01:00am (Monday – Wednesday), 07:00am – 04:00am (Thursday – Saturday) and also Bank Holidays

*Liquid & Envy*: Understood to be open to 03:00am several nights through-out the week

- 5.4.4 The town centre, by its nature, is a noisy environment where there is high activity at night time and in the early hours of the morning due to existing pubs, clubs, restaurants and takeaways. When it is considered what uses already exist within Maidstone town centre and their opening hours, I am of the view that the increased operation hours of this one takeaway would cause significantly cause further harm to the amenity of local residents. In my opinion, it would be unreasonable to refuse this application on residential amenity grounds.
- 5.4.5 Furthermore, the estimated sound emission from the extraction system would be between 25-30dBA (as previously stated under MA/11/1147) and this level is not considered to be unacceptable in terms of noise disturbance, especially given the existing background noise levels in the area.
- 5.4.6 Moreover, if the situation changes and in terms of the possible future impact upon local residents with regards to noise, fumes and smells, the occupants of 34 High Street would have to comply with Environmental Health legislation; and the Council's Environmental Health Team have the powers to take action if deemed necessary and justified. After consultation, the Environmental Health Officer has also raised no objection.
- 5.4.7 With everything considered, I am of the view that the proposed increase in operational hours for 34 High Street would not have a significant detrimental impact upon the residential amenity of any neighbouring property and so would not be contrary to polices R9 and R17 of the MBWLP 2000.

## **5.5 Visual Impact**

- 5.5.1 There are no external alterations to consider under this application and so the character, appearance and setting of the property itself, the Maidstone Centre Conservation Area and the adjacent listed and non-listed buildings would remain unaffected. The Council's Conservation Officer has also raised no objections.

## **5.6 Highways**

5.6.1 The principle for the property's intended use has already been granted under MA/11/1147 and I do not consider that a change to the proposed opening hours would have any further significant impact upon highway safety.

## **6. CONCLUSION**

6.1 It is therefore considered overall that the proposal is acceptable with regard to the relevant provisions of the Development Plan and amenity impacts on the local environment and other material considerations such as are relevant. I therefore recommend conditional approval of the application on this basis.

## **7. RECOMMENDATION**

GRANT PLANNING PERMISSION subject to the following conditions:

1. Any activity (including cleaning) in connection with the use of the premises shall only take place between the hours of 11.00am and 01:00am on Mondays to Thursdays and Sundays and 11:00am to 03:00am Fridays and Saturdays;

Reasons: To safeguard the enjoyment of their properties by nearby residential occupiers in accordance with policies R9 and R17 of the Maidstone Borough-Wide Local Plan 2000, policy NRM10 of the South East Plan 2009, PPS1 and PPG24.

### **Informatives set out below**

The applicant is reminded that no Class A5 development shall commence until details to fully discharge condition 2 of planning permission MA/11/1147 have been submitted to and approved in writing by the Local Planning Authority.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and the South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.