

**REPORT SUMMARY**

<b>REFERENCE NUMBER:</b> 24/502003/FULL		
<b>APPLICATION PROPOSAL:</b> Section 73 Application for Minor Material Amendment to approved plans condition 2 and 6 (to allow for the removal of stairs, existing front doors to be retained and layout amendment) pursuant to 23/502781/FULL for Change of Use from ground floor Sui Generis (Public House) to Class E restaurant part retail facilities with ancillary Sui Generis use (Takeaway).		
<b>ADDRESS:</b> The George, Benover Road, Yalding, Maidstone, ME18 6EJ		
<b>RECOMMENDATION: GRANT PLANNING PERMISSION subject to conditions</b>		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b> <ul style="list-style-type: none"> <li>• The relatively small scale of the proposed changes would not be harmful to local character.</li> <li>• The harm caused by removal of the internal staircase (no need for planning permission) is outweighed by benefits.</li> <li>• No harm to neighbour amenity.</li> <li>• No highways or parking issues that would justify refusal of planning permission.</li> <li>• In accordance with policies LPRSP11 (c) Town, district, and local centres and LPRCD1 Shops, facilities, and services.</li> </ul>		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Call in from Yalding Parish Council for the reasons in section 4 of this report.		
<b>WARD:</b> Marden And Yalding	<b>PARISH/TOWN COUNCIL:</b> Yalding	<b>APPLICANT:</b> Mr Dan Mahendran <b>AGENT:</b> Rory Newell Chartered Architect
<b>CASE OFFICER:</b> Francis Amekor	<b>VALIDATION DATE:</b> 15/05/24	<b>DECISION DUE DATE:</b> 30/09/24
<b>ADVERTISED AS A DEPARTURE:</b> No		

**Relevant planning history**

24/502492/SUB Submission of details pursuant to condition 3 (Programme of Building Recording) in relation to planning permission 23/502781/FULL. Decision pending.

23/502781/FULL Change of use of ground floor from public house (Sui Generis) to Class E restaurant part retail facilities with ancillary takeaway use (Sue Generis) Approved 09.08.2023. (NB: Yalding Parish Council comments on this application were "Councillors feel that a change of use to class E for eating and drinking on the premises and the sale of local produce and the Sui Generis use as a takeaway continues to support its retention as a valuable community asset").

Condition 2 attached to 23/502781/FULL states "The development hereby permitted shall be carried out in accordance with..." the approved plans that include drawing "200 Proposed Ground Floor Plans". Reason: To clarify which plans have been approved.

Condition 6 attached to 23/502781/FULL states "The area of floorspace to be used for restaurant and retail use shall be as set out on approved drawing 200 (proposed plans). Reason: Unrestricted use of the building or land could cause demonstrable harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers.

23/501342/FULL Change of Use from ground floor Sui Generis (Public House) to Class E restaurant part retail facilities with ancillary Sui Generis use (Takeaway). approved 26.05.2023.

13/0575 - Development and conversion of outbuildings to create one new family dwelling, amendment to MA/11/1538 – Approved.

09/0589 - An application for a Certificate of Lawfulness for existing use being use of the ground floor of the building as a single residential unit for a period in excess of four years as described in application MA/09/0589 – Approved.

## **MAIN REPORT**

### **1. DESCRIPTION OF SITE**

1.01 The application site consists of a former public house located on the east side of Benover Road with floorspace at ground floor, first floor and the roof space. The application building is in the Local Plan Review designated larger village of Yalding. The application site includes an open area extending to the rear and to the south of the adjacent Orchard View Stores. This wider area of land is outside the designated larger village and provides car parking and was the beer garden of the former public house.

#### **Application building**

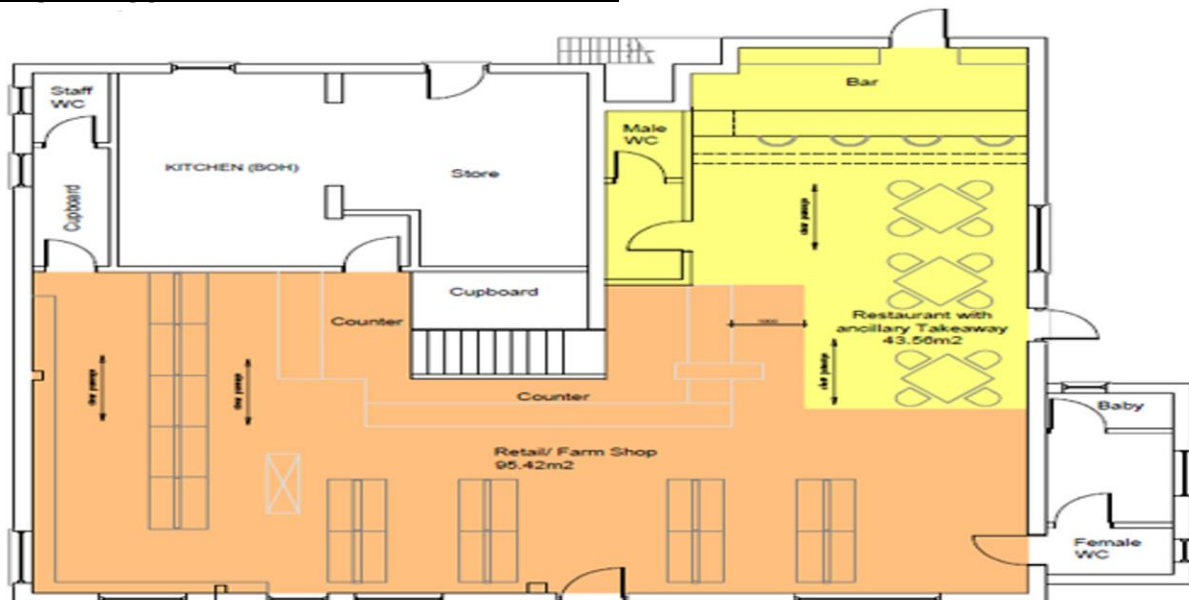


1.02 The whole application site is in Yalding Conservation Area The application building was built early to mid-19th Century. The building has been altered and is not statutorily listed but is considered a non-designated heritage asset and forms part of the character of Yalding Conservation Area. The closest of nearby Grade II listed buildings is Gabriel's Cottages, with others at Woolletts Cottages, Kingsland Cottages and Bridge Cottage (formerly Prentice Store).

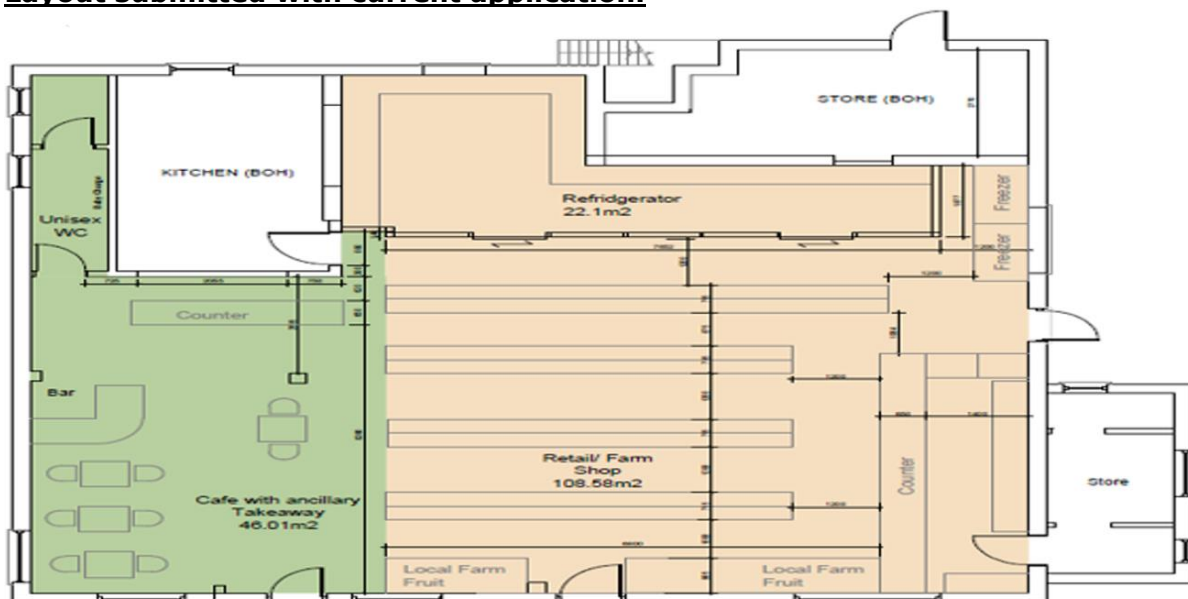
1.03 The River Beult is between 1 and 7 metres from the rear (west) site boundary and the site is in Flood Zone 3. Public footpath KM195 provides access from Benover Road along the southern site boundary to a path along the river.

1.04 Works have taken place to implement the planning permission granted in August 2023 (23/502781/FULL). This permission included a mixed use as a cafe, restaurant with ancillary takeaway and bar and retail/farm shop use. A planning condition (condition 6) attached to the permission restricts the area of floorspace to be used for the restaurant, café with ancillary takeaway to 43.56m<sup>2</sup>, and restricts the retail floorspace to 95.42m<sup>2</sup>.

**Layout approved under 23/502781/FULL**



**Layout submitted with current application.**



**2. PROPOSAL**

2.01 Permission 23/502781/FULL was for the change of use from a public house to a mixed-use including retail and a restaurant with an ancillary takeaway use. Although not in the description of development the approved plans showed a bar area as part of the restaurant floorspace.

2.02 The current submission seeks to amend two planning conditions attached to application 23/502781/FULL (condition 2 -approved plans and 6 -restricted floor area). These amendments will allow changes to the approved internal layout of the

building. These changes are in relation to the location of the uses in the building and the extent of the building floorspace that the individual uses cover.

2.03 The proposal includes the following:

- a) Overall internal floorspace increased from 139 to 154.6 (15.6m<sup>2</sup>). This increase is achieved from internal layout changes (no extensions).
- b) Original planning permission (23/502781/FULL) excluding kitchen and store areas provided the following floorspace.
  - Retail 68.7% (95.42m<sup>2</sup>)
  - Restaurant/cafe, ancillary takeaway, and bar area. 31.3% (43.56m<sup>2</sup>)
- c) Current planning application excluding kitchen and store areas is for:
  - Retail 70.2% [+1.5%], (108.6m<sup>2</sup>), [+13.18 m<sup>2</sup>].
  - Restaurant/cafe, ancillary takeaway 29.8% [-1.5%], (46m<sup>2</sup>) [+2.44 m<sup>2</sup>].
- d) Removal of the internal staircase to upper floors (this change does not on its own require planning permission).
- e) Change in description of the hot food use from restaurant to café (this change does not on its own require planning permission).
- f) Reduction in the size of the bar area in the café/restaurant floorspace (without condition 6 this change would not have required planning permission).
- g) Internal layout revised with café location moved in the building with cafe given street frontage (without condition 6 this change would not have required planning permission)..

### **3. POLICY AND OTHER CONSIDERATIONS**

#### Maidstone Local Plan Review (2024)

Policy LPRSS1– Maidstone borough spatial strategy  
Policy LPRSP12 - Sustainable transport  
Policy LPRSP14(B) - Historic environment  
Policy LPRSP7(D) – Yalding  
Policy LPRSP11 - Economic development  
Policy LPRSP11 (c) – Town, district, and local centres.  
Policy LPRSP15 – Principles of good design  
Policy LPRENV1 – Development affecting heritage assets.  
Policy LPRCD1 - Shops, facilities and services  
Policy LPRTRA4 – Parking  
Policy LPRSP15 – Design  
Policy LPRINF2 - Community facilities

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

Section 2 – Achieving sustainable development.  
Section 4 – Decision making.  
Section 6 - Building a strong, competitive economy.  
Section 12 – Achieving well designed places.  
Section 16 - Building a strong, competitive economy.

#### Supplementary Planning Documents:

Yalding Conservation Area Appraisal

#### **4. LOCAL REPRESENTATIONS**

##### **Local residents:**

- 4.01 8 representations and a petition (234 signatures) have been received objecting to the application for the following (summarised) reasons:
- Opening a substantial convenience store next to an existing store could jeopardise an important village asset.
  - Large expansion of the retail farm/shop would harm the character, appearance and functioning of the village.
  - Restaurant seating area is far too small, and barely enough for a café.
  - Retail shelving proposed in the new plan is substantial when compared with the previously approved plan.
  - Removal of the staircase is not a minor alteration.
  - New plan does not include the large walk-in refrigerator in the retail space despite being coloured orange in the plan.
  - Original planning permission was for a restaurant, and a café is different from a restaurant.
  - Original plans show space for 16 covers, but the new plans only show 8 covers.
  - Space given to the retail part is significantly more when compared with the previous approval.
  - Layout of the retail shelving in the new plan is also more appropriate for a convenience store as opposed to a facility to sell local produce.
- 4.02 A planning consultant instructed by owners of a neighbouring grocery store makes the following objections:
- Proposed layout would result in more of the ground floor area being used for the intended uses than previously proposed.
  - The bar and its associated seating area has been further reduced leaving doubts as to whether the proposed mix of uses is sustainable in the long term.
  - Reduction in the extent of customer and staff toilet facilities.
  - The building is an integral part of the Yalding Conservation Area and should have been treated as a non-designated heritage asset.
  - Many long-standing historic features of the building on the ground floor have already been removed and lost.
- 4.03 7 representations received in support of the application and a petition (71 signatures) for the following summarised reasons:
- The new store is valuable community asset, and the new cafe and takeaway will also be.
  - It would be great to see the cafe open, we already have three large restaurants in the village, walnut, boathouse and the sultan which is quite empty most days.
  - The store has been great help to me and because of large variety of products I can do my grocery shopping here.
  - Whilst not really the farm shop/cafe that was expected, I find the shop to be quite handy given the convenient opening hours.
  - I like the fact that it sells fresh produce and stocks some local supplies (for example Plaxtol Bakery).
  - The addition of a takeaway if done to a high standard would be an asset to the village.
- Yalding Parish Council**
- 4.04 Object and request refusal of permission for the following summarised reasons:
- The original change of use allowed for this valuable community asset to be retained in the best way possible.
  - What has been delivered is a convenience store which leaves no room for a restaurant'.

- Objection to the convenience store as there is one next door and having two shops selling the same items does not protect the community asset and this is not sustainable.
- Retail floor plan shown on the new drawing is far in excess of that originally granted.
- Plan submitted with the amendment is misleading as it does not accurately reflect the percentage of retail to restaurant'.
- Original permission indicated 16 seats whereas the current reduces that to 8.
- Current layout suggests customers waiting for their takeaway and not a restaurant.
- Outside eating and drinking is not included in this application and no indication of how those sitting in the garden will be served or access the toilets.
- Only one unisex toilet for both staff and customers.
- Removal of the internal staircase and addition of a metal external fire escape access to the upper floors has created two separate properties.
- Steps leading from the carpark into the side entrance have been covered up with concrete to form a ramp with a very steep gradient.
- Amendment does not give the residents of Yalding what they were promised.
- Very little local produce for sale, and cannot be described as a Farm Shop'.
- Refusal is requested to avoid loss of two vital community assets.
- Committee determination is requested if officers are minded to approve.

**Councillor Claudine Russell**

- 4.05 Object and request refusal of permission for the following summarised reasons:
- Already extant planning permission and the applicant should be made to keep to the conditions of that approved planning permission.
  - I would like this application thoroughly assessed against the Yalding Conservation area guidelines.
  - The glazing of the shop has been changed to clear glass where a clouded glazing would be more appropriate.
  - Current shop does not resemble this approved application at all and the applicant has a complete disregard for the conditions from his original permission and has not adhered to most of them.
  - Committee determination is requested if officers are minded to approve.

**5. CONSULTATIONS**

**MidKent Environmental Protection Team**

- 5.01 No objection

**KCC Archaeologist**

- 5.02 No objection subject to conditions on:
- Programme of building recording
  - Watching brief

**KCC Minerals and Waste Planning Policy**

- 5.03 No objection

**KCC Public Rights of Way**

- 5.04 No objection

**MBC Conservation Officer**

- 5.05 No objection subject to a condition requiring advertisement consent for any signage on the building (see condition 5).

## 6. APPRAISAL

- 6.01 The key issues are:
- Changes to the internal layout
  - Heritage
  - Residential amenity
  - Parking and highway safety

### Changes to the internal layout

6.02 The application site is in a local centre as defined by policy LPRSP11 (C). The local centre extends from the application site to the old bakery and Yalding Post Office at the junction of Lees Road and High Street.

6.03 Policy LPRCD1 states that new non-E or F class uses at ground floor level within the local centre will generally be resisted. In this case, the extant planning permission (23/502781/FULL) was for a restaurant with ancillary takeaway, (Use Class E(b)) and retail use (Use Class E (a)), with these approved uses in line with policy LPRCD1.

The approved and revised plans are both annotated as providing a 'retail' or 'farm shop'. Farm shops are generally located in the countryside, outside a local centre and policy (LPRSP11 (C) 7c) requires a link between the farm shop and a farm holding. The application site is in a local centre and there is no known link between the application use and a farm holding. A planning condition restricting the type of retail use (i.e. farm shop/local produce rather than convenience store) would not have passed the legal test in the case of the extant permission 23/502781/FULL and this remains the case).

6.04 The submitted revised plans show a change from a 'restaurant' to a 'café'. Planning legislation makes no distinction between a restaurant and a café. This type of use listed as Class E(b) "*for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises*". A use can change from a restaurant to a café without any need for planning permission.

6.05 The changes make more efficient use of the ground floor of the building and overall, there is 1.5% swing from the restaurant/cafe, ancillary takeaway use to retail use. The retail use is increased by a relatively small area of 13.18m<sup>2</sup> and the sale of food and drink use is increased by 2.44m<sup>2</sup>. In the absence of the restrictive conditions on planning permission 23/502781/FULL, the changes currently being considered would not have required planning permission. The application building is in a sustainable location where retail and food and drink uses are supported by policy.

6.06 Yalding Parish Council and residents have stated that they disagree with the applicant's annotation of ancillary space in the building (i.e. space that is not retail or a food and drink use). The layout plan attached to the extant planning permission excludes staff and customer toilets, kitchen and storage areas from the retail and restaurant uses.

6.07 The revised plan excludes kitchen, storage, and the walk-in refrigerator (22.1m<sup>2</sup>) from the retail and café uses. It is understood that the walk-in refrigerator is excluded from the other floorspace figures as it will be used by both uses. The gross internal area of the building is 194 m<sup>2</sup>. The revised proposal involves a reduction in ancillary internal space from 28% 21%, there is no issue found with the annotation of ancillary space.

- 6.08 The use of a shared customer and staff toilet has been raised in consultation responses. Whilst dealt with outside the planning system, it is understood that food hygiene legislation does not object to toilet facilities shared between customers and staff. The café use will be subject to food hygiene inspections. A food hygiene inspection of Yalding Supermarket at The George in June 2024 awarded 5 out of 5 stars including 'very good' against cleanliness and condition of facilities and building. There has been no objection raised by the environmental health team to the proposed layout as part of the planning application.
- 6.09 Yalding Parish Council and residents have expressed concern about the viability of two convenience stores next door to each other. As set out on the council's website business competition is not a valid planning consideration. In terms of retail uses LPRSP11(C) states that uses will be located "*...in order to promote choice, competition and innovation*". The presence of another convenience store nearby does not provide sufficient justification to refuse planning permission.
- 6.10 Consultation responses refer to outside eating and drinking areas. The current application is for the expansion of the internal floor space only. Any external seating area created without the benefit of planning permission would be the subject of a separate enforcement investigation. The two upper floors of the building are in residential use and the installation of an external staircase is the subject of a separate enforcement investigation.
- 6.11 With the extant retail/farm shop use, the current application is purely considering the changes to the internal layout. Overall, whilst competition is not a planning consideration, given the moderate scale there is no evidence to suggest that the changes proposed would jeopardise existing facilities in the local area or harm local character. The proposals would comply with policy LPRCD1 of the Local Plan Review (2024).

### **Heritage**

- 6.12 The local planning authority has a statutory duty to have special regard to the desirability of preserving listed buildings and their settings under section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty that special attention should be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
- 6.13 Policy LPRSP14(B) of the Local Plan Review (2024) relates to the historic environment and requires that, inter-alia, the characteristics of heritage assets are protected, and design is sensitive to heritage assets and their settings. Policy LPRENV1 requires applicants to ensure that new development conserves, and where possible enhances, the significance of the heritage asset.
- 6.14 The NPPF (2023) states that local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation. NPPF (2023) advises "*The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset*" (paragraph 209).
- 6.15 The application building is early to mid-19th Century, and the floor plan and roof form suggest the building has evolved over time. The building does not meet the criteria for statutory listing but forms an integral part of the character and fabric of the Yalding Conservation Area and needs to be treated as a non-designated heritage asset. This status does not provide any power to require formal approval



for works (like listed building consent) but is recognition that there is heritage value.

- 6.16 The application site is in the setting of several listed buildings and is within the Yalding Conservation Area. As part of the current application, it is indicated that there are no changes to the existing external fabric or appearance of the application building. In this context the application would not diminish the heritage importance of Yalding Conservation Area or nearby listed buildings.
- 6.17 The Yalding Conservation Area Appraisal refers to the application building on two occasions. These references are in respect of the street outside the building in terms of street furniture and reducing the quantity of telephone wires outside the building. The change of use of the application building to a retail/farm shop and a 'food and drink' use is established by the extant permission (23/502781/FULL). The current application involves relatively minor changes to the previously approved internal layout.
- 6.18 The current application does not involve any external changes to the building. As the building is not listed, internal changes and some external changes can be made without the need for planning permission (with reference to comments from Cllr Russell this includes change from obscured to clear glazing). As the internal staircase is a modern addition to the building there is no objection to its loss and the conservation officer has not raised any objection.
- 6.19 The character and significance of the non-designated heritage assets would remain evident principally in its external appearance and value to the conservation area. In the planning balance, the less than substantial harm identified, is weighed against the improvements to the building brought about by the internal changes.
- 6.20 On this basis, the proposal would comply with policy LPRSP14(B) and LPRENV of the Maidstone Borough Local Plan Review (2024), Sections 71 (1), and 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requiring officers to pay special regard to "the desirability of preserving listed building and conservation areas including their setting or any features of special architectural or historic interest which it possesses. These aims are consistent with Chapter 16 NPPF (2023).

### **Residential amenity**

- 6.21 Policy LPRHOU2 states that proposals should not result in "...unacceptable loss of privacy, outlook or light..." or "...unacceptable intrusion from noise or odour". Policy LPRSP15 seeks to protect from "...*excessive noise, vibration, odour, air pollution, activity or vehicular movements, overlooking, or visual intrusion, or loss of light to occupiers*".
- 6.22 The application building is in a designated local centre. The uses in the building approved through an extant permission are in line with the uses sought by adopted policy. The current application retains the retail/farm shop and a 'food and drink' use with a relatively minor increase in floor area. With the small proposed change any associated increase in noise would not be so significant as to have a detrimental effect on the amenities of occupiers of neighbouring houses. It is highlighted that the previous use of the premises as public house would have the potential to result in significantly greater harm to amenity.
- 6.23 The proposals would comply with policy LPRSP15 and LPRQD6 of the Maidstone Borough Local Plan Review (2024) and the core principles set out in the NPPF (2023) seeking to secure a good standard of neighbour amenity.

### **Parking**

- 6.24 The site includes a large courtyard which provides 13 car parking spaces.
- 6.25 Given the moderate increase in floor area, the location of the site and the nature of uses, the proposal will not result in significant intensification in the use of the existing car park. The existing car parking provision would be adequate to meet the needs of customers without detriment to the local character.

### **Other matters**

- 6.26 The KCC Archaeologist recommended planning conditions in relation to building recording and implementation of a watching brief. As there are no external works included with the application and internal works have been completed the recommended planning conditions do not meet the relevant legal tests of being necessary or reasonable.

### **PUBLIC SECTOR EQUALITY DUTY**

- 6.27 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 relatively small scale of the proposed changes to the extant permission for retail/farm shop and the restaurant/café would not be harmful to local character.
- 7.02 The harm caused by removal of the internal staircase (no need for planning permission) is outweighed by proposal benefits.
- 7.03 No harm to neighbour amenity and no highways or parking issues that would justify refusal of planning permission. Application is in accordance with policies LPRSP11 (c) Town, district, and local centres and LPRCD1 Shops, facilities, and services.

## **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 and/or informatives in line with the matters set out in the recommendation and as resolved by the Planning Committee:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:  
001 Site Location Plan  
200 A Proposed Ground Floor Approved  
205 D Proposed Ground Floor Plan  
Heritage Impact and Design and Access Statement  
Reason: To clarify which plans have been approved.
- 2) The ground floor of the building shall only be used as a cafe, restaurant with ancillary takeaway and bar and for retail purposes and shall not be used for any other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or permitted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any statutory instrument revoking and re-enacting those Orders with or without modification);  
Reason: Unrestricted use of the floorspace could cause demonstrable harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers.

- 3) The area of floorspace to be used for restaurant and retail use shall be as set out on approved drawing 205 D (Proposed Ground Floor Plan).  
Reason: Unrestricted use of the building or land could cause demonstrable harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers.
- 4) The existing off street car parking and access shall be retained for use by customers and staff of the application building.  
Reason: To ensure that car parking will not be displaced on to the street where it may cause harm to highway safety.
- 5) No additional advertisement or signage shall be displayed on the building or on the wider red line application site without the submission of details to, and the prior written approval of the Local Planning Authority. This requirement is regardless of whether the advertisement or signage is permitted by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended).  
Reason: To ensure that advertisement or signage does not impact on the appearance of the building and the surrounding conservation area.

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