

APPLICATION: MA/10/2184 Date: 22 December 2010 Received: 23 December 2010

APPLICANT: Trainfield Ltd

LOCATION: 8, GABRIELS HILL, MAIDSTONE, KENT, ME15 6JG

PARISH: Maidstone

PROPOSAL: Change of use of ground floor from Class A1 shop to a use falling within uses class A3 restaurant/cafe or use Class A5 hot food takeaway as shown on Drawing 173/02, scale 1:1250 Site Location Plan, and Supporting Statement received on 22 December 2010

AGENDA DATE: 28th April 2011

CASE OFFICER: Laura Gregory

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

- it is a departure from the Development Plan and has been advertised as such.

1. POLICIES

- Maidstone Borough-Wide Local Plan 2000: R7
- South East Plan 2009: SP2, CC1, BE1, TC2
- Village Design Statement: N/A
- Government Policy: PPS1, PPS4, PPS5

2. HISTORY – Most Relevant

MA/07/1475 - Change of use from class A1 retail sales to Class A5 takeaway restaurant - REFUSED

3. CONSULTATIONS

MBC Conservation Officer – No objections in principle to the change of use.

“The change of use is likely to be acceptable in principle as long as a suitable solution can be devised re any extract ducting required. Details of the proposed method of extraction to ensure that it does not harm the special character of this listed building in Maidstone Centre Conservation Area should be submitted.

I have no objections re the impact of the change of use on the character of the conservation area and indeed it may benefit the vitality of the area. Similarly it is in nobody's best interest to allow a listed building to lie empty for want of a suitable use, but the onus is on the applicant to show that their proposals will not damage the significance of the listed building."

MBC Environmental Health Officer – No objections subject to conditions and informatives.

"I note that there are no details provided regarding waste storage etc so further information should be required in this respect.

An extract ventilation and any air conditioning plant should ideally be fitted with timer units to ensure that they are not left running beyond half an hour after the time that trading ceases.

Night time deliveries should be restricted to prevent any noise disturbance."

4. REPRESENTATIONS

One letter of representation raising the following objections:-

- Demands of the proposed use and the subsequent erosion of the historic fabric of the listed building is unsustainable;
- Smell and flies experienced with A3 business use are a health safety concern;
- Use would squander the quality of the shopping area at top of Gabriel's Hill;
- Should be located further down Gabriels Hill.

5. CONSIDERATIONS

5.1 Site and Surroundings

5.1.1 The application site comprises a ground floor commercial unit at 8 Gabriels Hill. The building is Grade II listed and is located within the Maidstone Town Centre Conservation Area. A three storey building, the ground floor is vacant; its former use being that of a sandwich bar. The two floors above have a lawful residential use but are currently vacant.

5.1.2 Situated at the top of Gabriels Hill, a pedestrianised street, the site is within the Core Shopping Area as defined by the Local Plan. Ground floor uses in this area are predominantly A1 with either residential use or office use on the first and second floor. There are a few A3, A4 or A5 uses in place amongst the shops such as 'Ethos', a public house which is opposite the site and 'Wimpey' a fast food restaurant to the north. There is also 'Strawberry Moons' and 'The Road House' night club both of which, are to the south of the site. The considerable majority

of the units which are in retail use comprise independent stores such as jewellers, opticians, bridal shops, and fashion boutiques.

5.2 Proposal

5.2.1 Planning permission is sought solely for the change of use of the ground floor of the unit to either A3 (Restaurant or Cafe) or A5 (Hot Food Takeaway) use. The proposal involves no external alterations to the building. The application is simply for the change of use to allow greater flexibility to market for A1, A3 or A5 use.

5.3 Planning Assessment

Principle of Development

5.3.1 The application site is within the Core Shopping Area as designated under saved Policy R7. The Policy states:

The core shopping area as defined on the proposals map is designated for class A1 (shop) uses at ground floor level. Within this area, the Borough Council will not permit the use of ground floor premises for Class A2 (Financial and Professional Services) Class A3 (Food and Drink) uses or other uses.

5.3.2 The application has been advertised as a departure from the Development Plan because the proposed use (A3 or A5 use) is not A1.

5.3.3 Central Government Guidance and advice has changed since the Maidstone Borough Wide Local Plan (2000) was adopted with the publication of PPS4 Planning for Sustainable Economic Growth. Furthermore, changes have been made to the Use Classes Order which has transferred hot food takeaways from Class A3 to Class A5. Therefore, when determining this application it is appropriate to give weight to the more recent central government guidance on economic development and assess whether this would override the existing local plan policy.

5.3.4 Planning Policy Statement 4 – ‘Planning for Sustainable Economic Growth’ (December 2009), sets out the Government’s national planning policies for economic development. With an overarching objective to achieve sustainable economic growth, one of the Government’s methods to achieve this is by promoting the vitality and viability of town centres as important places for development of new town centre uses.

5.3.5 Policies EC3 and EC4 of PPS4 are therefore of most relevance. Both policies allow for greater flexibility when planning for town centre development. Under these

policies, local planning authorities are advised to proactively promote 'competitive town centre environments' providing consumer choice by:

- a) *Supporting a diverse range of uses which appeal to a wide range of age and social groups, ensuring that these are distributed throughout the centre.*
- a) *Planning for a strong retail mix so that the range and quality of the comparison and convenience retail offer meets the requirements of the local catchment area, recognising that smaller shops can significantly enhance the character and vibrancy of a centre.*
- b) *Taking measures to conserve and, where appropriate, enhance the established character and diversity of their town centres.*

5.3.6 In comparison to Policy R7, PPS4 clearly adopts a more flexible approach to town centre development in order to prevent town centre decline. By adopting a more flexible approach towards town centre development, an attractive and more viable town centre environment for new business to develop is created. Greater consumer choice is provided through wider range of services and uses and to my mind, this would not only contribute to the Government's objective of creating a flexible and resilient town centre, but it would also contribute to the one of the Council's main objectives to promote Maidstone as an attractive place to live and work.

Impact on the Vitality and Viability of the Town Centre

5.3.7 The application site is a vacant retail unit in a listed building on Gabriels Hill. Gabriels Hill is a busy and vibrant part of the town centre which, is aided by the absence of vehicles and the presence of an entrance to The Mall, to the south of the site. High levels of footfall are apparent and the commercial premises are generally attractive and well maintained, with the exception of the application site. Lying vacant for more than 12 months, the site is beginning to appear tatty and visually degrading and this significantly harms the vitality of the street.

5.3.8 When the 2007 application to change the use of this unit was refused it was considered that the proposal would have led to the loss of an A1 retail unit in the Core Shopping Area which was contrary to Policy R7 of the Local Plan. Since then PPS4 has been published and as stated, this encourages local authorities to be more flexible towards town centre development.

5.3.9 With the development of Fremlins Walk, the shopping trends in core shopping area have shifted. There are more A1 retail uses now available within the primary shopping area compared to when Policy R7 was adopted, and there is a wider mix of retail uses available. Several major retail stores such as House of Fraser, Zara, T-Reds, Mad House and Tesco have now opened in the town but these stores are located within Fremlins Walk, Week Street or The Mall Shopping Centre.

- 5.3.10 The geographical location of the major retail stores in the town centre, to my mind, indicates that there is now less demand for A1 uses on Gabriels Hill. Supporting evidence from the applicant also indicates that there is less demand. The rental value of a unit in Gabriels Hill range approximately from £53.41 to £37.00 a week whereas in Fremlins Walk and Week Street rentals are circa £149.80 and £116.40, according to chartered surveyors MKH Clokes.
- 5.3.11 As majority of the units in Gabriels Hill are still in A1 use and there are limited vacancies in the street; there are 4 vacant units in total including a public house, I do not consider that the viability of the area would be significantly harmed by the loss of one Class A1 unit. On the contrary, the proposal would result in the re-use of a vacant unit in a listed building which, by virtue of its prolonged vacancy, is causing harm to the vitality and character of the street. The proposed use would introduce increased choice and diversity to the area which could enhance its viability and, it would provide a good consumer choice within the town centre. The scale of the proposed change would also not be significant enough to undermine the overall retail focus of the Gabriels Hill or, its status as a gateway to main shopping area.
- 5.3.12 Given the sparse scattering of other restaurants and takeaways in the area, I consider that the proposed change of use would not amount to an over concentration of this particular use. Indeed, the nature of proposed use would generate additional custom in this location and, located in close to proximity public houses and night clubs; it would enhance the vibrancy of the area particularly during the evening.

Impact on the Listed Building and Conservation Area

- 5.3.13 Alongside encouraging the development of new town centre uses in town centres, PPS4 encourages development which results in new uses for vacant historical buildings. This proposal would involve the re-use of a vacant listed building which is within a designated Conservation Area. It therefore complies with both of the Government's objectives to achieve sustainable economic growth and, protect the historical environment.
- 5.3.14 To allow a listed building to lie empty for want of a better use for a prolonged length of time would lead to the deterioration of the fabric and form of the building and in this case, the Conservation Area. This is contrary to the aims of PPS5 Planning for the Historical Environment. The building has been listed as it is considered to be essential to the historic character of Gabriels Hill. By allowing other uses to take place on the ground floor of this building, the long term preservation of a historic building in a historic area would be secure and given that the proposed change of use would benefit the vitality of the street, the principle of the development is supported by the Conservation Officer.

5.3.15 With regard to the Conservation Officer comments that details of ducting should be submitted before the application is determined, I do not consider this is necessary given that the proposal is for change of use for either A3 or A5 and therefore, depending upon what use is implemented, external ducting may not be required. Any ducting will require listed building consent and the impact it would have on the listed building would be duly considered under any subsequent listed building consent application.

5.3.16 To conclude, whilst the application is technically a departure from the Development Plan in that it would result in the change of use of an A1 unit in the Core Shopping Area, it would nonetheless, create a new use for a vacant listed building in a defined Conservation Area, in the town centre. The proposed use would introduce increased choice and diversity to the town centre and this would in turn enhance its vitality and viability in the long term. The change of use would also generate an employment opportunity within the town centre and attract new trade and investment to the town which is in accordance with the Government's and Council's main objectives for the town. I therefore consider that this proposed change of use is in accordance with Policies EC3 and EC4 of PPS4 and that this proposal to depart from the Development Plan is justified.

Impact on Residential Amenity

5.3.17 There are few residential units in the locality. There is a flat above the unit but it is vacant and new flats have been permitted at 23 Gabriels Hill. With regard to the flats at 23 Gabriels Hill, these flats would be located across the street and therefore are unlikely to suffer from disturbance from the proposed change of use. Furthermore given that there are already businesses in the immediate vicinity which remain open at late hours as such as the Strawberry Moons Night Club and The Roadhouse, I do not consider that the proposed use would generate additional noise and disturbance that would impact on the residents of the new flats or, the flat above the unit subject to this application. The Environmental Health Officer has been consulted and raises no objections on to the development on the issue of noise and disturbance. As such, I do not consider it necessary to impose a condition which restricts the hours of opening.

5.3.18 There has been no information submitted with regard to what level of ventilation would be and what storage facilities there are for refuse on the site. In the interest of protecting the amenity of the surrounding area I consider it necessary to impose conditions for these details to be submitted.

5.3.19 Therefore, subject to conditions, I believe that this proposal would not have an adverse impact upon the residential amenity of neighbouring properties.

Impact on the Highway

5.3.20 No off road parking is proposed but, as the site is in a town centre location I consider it to be a sustainable location. This proposal would not therefore have a significant impact upon the parking provision, generate a significant need or, have a detrimental impact upon highway safety.

6 Conclusion

6.1 To conclude for the reasons stated above, I consider that it is appropriate and justified to depart from the existing Development Plan and to give greater weight to the more recent guidance provided by Central Government (PPS4). I therefore recommend conditional approval of the application on this basis.

7 RECOMMENDATION

APPROVE 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 shall not commence until details of satisfactory facilities for the storage of refuse on the site have been submitted to and approved in writing by the LPA and the approved facilities shall be provided before the first occupation of the building(s) or land and maintained thereafter.

Reason: No such details have been submitted and in the interest of amenity in accordance with PPS1.

The proposed development, subject to the conditions stated, is not considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000), but there is an overriding material consideration to indicate an approval of planning consent being the benefits to the viability of a Grade II Listed Building.