

APPLICATION: MA/13/1254 Date: 15 July 2013 Received: 15 July 2013

APPLICANT: Mr R Kanesan

LOCATION: 99, LONDON ROAD, MAIDSTONE, KENT, ME16 0HF

PARISH: Maidstone

PROPOSAL: Change of use of part of the ground floor to a take away (Use Class A5) and the erection of an extract raised to the rear and new shop front as shown on the Site Location Plan, Block Plan, drawings LR-0633 -001 and LR-0633-002, Planning Statement, Design and Access Statement and other supporting documentation submitted on the 15th July 2013.

AGENDA DATE: 12th December 2013

CASE OFFICER: Annabel Hemmings

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

- Councillor Cynthia Robertson has requested it be reported for the reason set out in the report

1. POLICIES

- Maidstone Borough-Wide Local Plan 2000: T13, R17, ENV6, ENV8
Government Policy: National Planning Policy Framework 2012: Chapters 1, 4, 7

2. HISTORY

MA/81/1777 – External W.C. Approved 9th February 1982.

MA/79/0736 – New shop front and lean to. Approved 6th August 1979.

MA/74/0432 – Paved area for car parking (130sqm). Approved 31st October 1974.

3. CONSULTATIONS

Environment Agency: Have assessed this application as having a low environmental risk and, therefore, have no comments to make.

Kent County Council Highways: The site has permission for A1 retail use and do not expect the change of use of part of the site to A5 takeaway will lead to any significant increase in traffic. Parking is available for seven cars to park and parking already occurs along London Road in the vicinity of this site without leading to any detriment to highway safety. In view of this, do not raise any objection

Environmental Health: Matters considered: Odour accumulations, noise and amenity. Comments: Any demolition or construction activities may have an impact on local residents and so the usual informatives should apply in this respect. The parts of the building to be altered should be checked for the presence of asbestos and any found must only be removed by a licensed contractor.

From the information supplied regarding the extraction unit, it would appear unlikely that the extraction system would cause any significant noise nuisance to local residents and the position and height of the flue appear adequate enough to guard against any odour nuisance.

No objections raised, subject to informatives relating to:

- The safe removal of asbestos;
- Minimising nuisance during construction works; and
- The Food Safety Act 1990 and Health and Safety at Work Act 1974.

4. REPRESENTATIONS

Councillor Cynthia Robertson: If minded to approve this application, please report it to the Planning Committee. I have the following concerns about the application in my ward and would wish the Committee to consider them:

- Potential detrimental effect on the Allington Millennium Green, which is opposite the site;
- Possible nuisance to local residents caused by cooking smells and litter; and
- Adequacy of car parking facilities.

Sixteen letters of objection have been received from local residents. Their comments are summarised below:

- The property sits on the busy A20 and is already a popular off licence;
- There is space for approximately 7 vehicles at the site, but given the location of the dropped kerbs (in and out), it is likely that less than this number can park safely;
- People park vehicles on the pavement at peak times;
- The introduction of the takeaway will inevitably introduce additional vehicles to this location;

- Additional parked vehicles could obstruct access to neighbouring roads;
- Some indication as what will be done to remove smells pollution is given in the proposal, but these do not appear to have worked elsewhere;
- Additional litter from the takeaway will be found in the local area;
- The application conflicts with policy R17 of the Maidstone Borough Wide Local Plan 2000. It will adversely affect residential amenity and cause problems of noise, litter access, parking and highway safety;
- The proposed takeaway will be yards from our house and will seriously impact on what we see and hear every day of the week, particularly evenings and weekends;
- There will be a significant increase in people attracted to the site, reducing our privacy particular in the front of the house and the garden;
- When alcohol and fast food are available in the same location in the late evening there is a clear and evident risk that anti social behaviour may occur;
- People often have to wait at takeaways whilst their food is cooked. They may sit in their vehicles or on local walls etc to consume it;
- Have experience of living near a takeaway – the smell of frying, doors slamming, people shouting, car horns, brake squeals, people parking outside the house and rubbish dumped in our garden;
- There is no indication of the volume of business anticipated, therefore the impact cannot be judged;
- The takeaway may have a large catchment area, not just the local community;
- The application makes reference to CCTV, waste bins and staff shopping anti-social behaviour, but they are only going to deal with issues within the takeaway not in the road or at nearby properties;
- Can deliveries be made to the site safely?
- There are other uses which attract people with vehicles in the local area;
- This section of London Road has a history of serious accidents;
- Visibility splays from the car park are not very good. Applications for the adjoining properties (101 & 103) to have vehicular access were refused on visibility splays and highway safety;
- The proposal is for the takeaway to have the same opening hours as the existing off licence. There is a risk, however, that this will creep to a later time to serve people frequenting the nearby Pippin Inn or other similar establishments;
- There is no mention of signage/advertisements for the takeaway in this application;
- Motorists focus on traffic and not whether pedestrians are walking on the pavement to the front of the site;
- Although the extract riser is to the rear of the property, the smell of fried food will waft around the local area;
- There are 7 customer spaces at present, but sometimes some of these are occupied by staff from the shop;
- This development could affect trade from other takeaways;
- Not aware of the specific type of takeaway planned;

- Nearly all the other businesses within London Road are medical and all of which close their doors at 6pm or so;
- Do not believe another takeaway is required locally;
- The site is on the route to several schools. Understood the policy is not to put takeaways in such locations as children should not be encouraged to purchase takeaway food;
- The current owners of the office licence do not show regard for local people;
- Anxious about what the effect of a takeaway will have on the value of my house;
- No guarantee that the extraction products will actually be installed;
- No guarantee that the cleaning regime proposed will take place;
- No guarantee as to the type of clientele the proposed takeaway will attract.

The Allington Millennium Green Trust has also written to object to the proposal on the following summarised grounds:

- The Trust should have been notified by the Council about this application, as the largest landowner in the vicinity and with the Green only a few yards away from the premises concerned;
- The junction of Buckland Lane with London Road is dangerous and there have been many accidents and minor incidents over the years;
- There has been an increasing tendency for cars to be parked on London Road, on the south eastern section of Buckland lane and even across the junction whilst people go to the off licence. A takeaway facility would increase this trend;
- The roads surrounding the Green may be the subject of increased traffic and parking causing hazards for pedestrians;
- Cooking smells may spoil the semi- natural aspect of the Green and thus the enjoyment of legitimate visitors;
- There is likely to be an increase in anti-social behaviour and in noise;
- People may eat and drink takeaway items on the nearest open space – the Green;
- The availability of both fast food and alcohol could increase underage drinking of alcohol, which is an historic problem in the area;
- Frequently, litter (including beer, wine and spirit bottles) is dumped on the Green even though there are a number of litter bins. All maintenance of the Green is by volunteers and the Council does not collect waste from our bins;
- If consent is granted the following should be implemented – parking restrictions/yellow lines should be placed in the local area, a pedestrian crossing on London Road at the end of Buckland Lane; the owners of the takeaway should collect litter from the Green and the surrounding area on a daily basis, the Council's Environmental Enforcement Officers should patrol the area and the Council should start collecting rubbish from the bins on the Green; and
- The proposed facility is in fairly close proximity to a number of schools. Some local authorities consider imposing restrictions on takeaway outlets in such areas.

5. CONSIDERATIONS

5.1 Site Description

- 5.1.1 No 99 London Road is a detached property set back from the road behind a forecourt parking area. It can essentially be seen as two parts – a single storey flat roofed element and a two storey pitched roof element. The front of the single storey element is used as an off licence/shop and has been trading for a number of years. To the rear of this is a bathroom and toilet.
- 5.1.2 The first floor of the two storey element is currently houses a kitchen, living room and two bedrooms. The half of the ground floor adjoining the shop is utilised as shop floor and storage for the shop. The remainder is utilised as a garage (with garage doors) and an office to the rear.

5.2 Proposal

- 5.2.1 This application seeks consent for the change of use of the existing garage area to Class A5 take away use. This area was utilised as a storage area for the shop, but has not been utilised as such for a number of years.
- 5.2.2 A shop front, designed to reflect that of adjoining store, will be added to the store and the inside would be fitted out to provide a kitchen/preparation area, counter and customer area. The adjoining convenience store will not be affected by the proposal.
- 5.2.3 The proposed trading hours of the takeaway would reflect those of the convenience store – 10:00 hours to 23:00 hours Monday to Saturday and 11:00 to 22:00 hours on Sundays. Waste bins will be provided and it is proposed that these would be taken in nightly at the close of trading. CCTV would be provided as a security measure both inside and outside the premises. Odour control would be via a stainless steel canopy complete with baffle filters and discharge would be to a high velocity discharge termination piece at high level to the rear of the property.

5.3 Principle of Development

- 5.3.1 The application site lies within the built up urban area of Maidstone and has no formal designation in the Maidstone Borough Wide Local Plan 2000. Within such areas it is anticipated that uses will remain broadly unaltered.
- 5.3.2 The National Planning Policy Framework 2012 sets out the government's commitment to economic growth in order to create jobs and prosperity. It states that the planning system should do everything it can to support

sustainable economic growth. Significant weight should be placed on the need to support economic growth through the planning system. The framework also includes a presumption in favour of sustainable development at its heart.

5.3.3 Policy R17 of the Local Plan states the Council's support for hot food shops, restaurants, cafes, bars and public houses outside of the Core Shopping Area provided 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

(2) 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."

5.3.4 This proposal would contribute to economic growth within the Borough. It would utilise part of an existing building which is currently unused and employ a total of 3 people (1 full time and 2 part time). It would also contribute to sustainable development as it would be located within the urban area and adjoining the existing convenience store. It would be easily accessed by various sustainable means of transport and allow customers to make linked trips.

5.3.5 The proposal would not adversely affect the viability or viability of the existing retail store on the site and it is not considered that the cumulative effect of the proposed takeaway with others in the locality would prejudice the store or others in the wider area. The nearest takeaways are at the Mid Kent Shopping Centre and closer to Maidstone Town Centre.

5.3.6 It is noted that some local residents have raised concerns that the site is on route to several schools and that some local authorities have adopted policies to prevent takeaway establishments being located in such areas. The Council does not have such a policy and each application must be considered on its own merits. Much of the urban area of the Borough could be considered to be enroute to a school, so if such a policy were to be applied, it is likely that no takeaway establishments would be approved. The site is not adjacent to a school and, even if it were, it is unlikely that its location on health grounds would be a material planning issue when determining a planning application.

5.3.7 Issues of noise, odour and residential amenity are discussed in detail later in the report and, subject to these, I am satisfied that the introduction of a takeaway on this site is acceptable development in principle.

5.4 Visual Impact

- 5.4.1 The visual impact from this proposal will be limited to the new shop front, CCTV cameras and the waste bins proposed. The proposed shop front is considered acceptable in terms of design and reflects that of the adjoining convenience store. Whilst no details of given of the security cameras, modern cameras are small, well designed and commonly located on retail/commercial premises such as the proposed takeaway. In terms of the waste bins, again no details of been provided as to the number proposed or their design. The provision of bins is again common outside shops and commercial premises and indeed within urban areas as a whole.
- 5.4.2 I am satisfied that the visual impact of this proposal is minimal and would not adversely affect the character or appearance of the local area.

5.5 Residential Amenity

- 5.5.1 Local residents have raised concerns about the effect of the proposal on their residential amenity. These concerns centre around noise and odour generation from the proposed takeaway and anti social behaviour that may result in the local area due to the proposal.
- 5.5.2 Concerns about odour and noise are common when takeaway establishments are proposed. The provision of adequate extraction units to deal with odour are essential to prevent such establishments having an adverse effect within their locality and surrounding area. In this instance detailed information has been submitted about the extraction system proposed to serve this takeaway together with a commitment to its regular maintenance. The Council's Environmental Health Team have reviewed the details and advise that they are satisfied with the proposed arrangements. It is considered appropriate to secure the installation of the extraction system as set out in the application by condition.
- 5.5.3 Local residents have also raised concerns about the level of noise which may be generated from the takeaway. They state that the area is largely residential with the non residential elements being medical establishments which close by 6pm. The convenience store on the site already opens to 11pm on Mondays to Saturdays and 10pm on Sundays. The proposed takeaway would mirror these hours and a takeaway use itself is not necessarily a use which generates a high level of noise. It is accepted that customers visiting the site may generate noise, including cars arriving and departing and car doors shutting, but it is not considered that this would be excessive given the scale of the proposed unit and its urban setting. No issues have been identified by the Environmental Health Team in relation to general noise generation from the takeaway use or from the

proposed extraction system. I am, therefore, satisfied that the proposed would not generate unacceptably high levels of noise.

5.5.4 I note that local residents also expressed concerns that this proposal may lead to anti social behaviour. These concerns largely relate to the fact that the customers of the proposed takeaway may make linked trips to buy alcohol from the adjoining convenience store fuelling an increase in anti social behaviour, the fact that customers may have to wait for food to be cooked and that litter may be dumped in the surrounding area. It is not uncommon for takeaway establishments to be located next to or near convenience shops selling items such as alcohol and for customers to make linked trips. Many local parades of shops will have such relationships and these operate without excessively high levels of anti social behaviour. There is no evidence that the introduction of a takeaway unit next to the existing convenience store will increase anti social behaviour and it is a key planning policy to collocate retail units/facilities to allow customers to make linked sustainable trips. The applicants have recognised that concerns about anti social behaviour are common when new takeaways are proposed and have sought to allay these fears here by promoting the use of CCTV and the provision and maintenance of rubbish bins. These measures are welcomed and whilst it is noted that they will only help control/limited outbreaks of anti social behaviour at or near the site, this is the case with any such localised security measures. I am satisfied that there is no planning reason to refuse this application on the basis that it would generate an excessive level of anti-social behaviour.

5.6 Highways

5.6.1 Local residents have raised concerns about the highway implications of this proposal. These include concerns about highway safety in the vicinity of the application site and parking provision to serve the proposed development.

5.6.2 Kent County Council's Highways Team has been consulted on the application. They advise that they do not expect the proposal to generate a significant increase in traffic and that there is parking available on site for 7 cars and parking already occurs on London Road without any detriment to highway safety. They raise no objection to the proposal.

5.6.3 I am, therefore, satisfied that the proposal will not have an adverse effect on the local area in highway terms.

6. CONCLUSION

- 6.1 The proposal is considered to be broadly compliant with central government guidance and relevant Development Plan policies. Therefore, it is concluded that there are sound planning reasons for this application to be recommended for approval.
- 6.2 In formulating this recommendation, all other matters which were drawn to the Council's attention have been taken into account, but nothing of sufficient weight was found to override the factors which led to this recommendation.

7. 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. Prior to the commencement of the use hereby permitted, the fume extraction system shall be installed at the premises. The system will be that submitted with the application unless otherwise agreed in writing with the Local Planning Authority. The extraction and ventilation system shall thereafter be permanently retained in the agreed form and shall be operated at all times when cooking is being carried out on the premises and not operated at any time outwith the opening times of the premises.

Reason: In the interests of residential amenity.

3. Notwithstanding the terms of any licence issued for the premises, the premises shall be cleared of all customers by 23:00 hours and by all staff by 24:00 hours Monday to Saturdays, the premises shall be cleared of all customers by 22:00 hours and by all staff by 23:00 hours on Sundays. The premises shall not open for business before 10:00 hours Mondays to Saturdays or before 11:00 hours on Sundays.

Reason: In the interests of amenity.

4. The development shall not commence until details and specifications of the proposed security and CCTV cameras have been submitted to, and approved in writing by the Local Planning Authority. The cameras shall be installed prior to

the first use of the premises hereby permitted and thereafter shall be permanently retained.

Reason: In the interests of amenity.

5. The development hereby permitted shall be carried out in accordance with the following:
Site Location Plan, Block Plan, drawings LR-0633 -001 and LR-0633-002, Planning Statement, Design and Access Statement and other supporting documentation submitted on the 15th July 2013.

Reason: To ensure the quality of the development is maintained and to prevent harm to the residential amenity of neighbouring occupiers.

Informatives set out below

Adequate and suitable measures should be carried out for the minimisation of asbestos fibres during demolition, 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.

Attention is drawn to Sections 60 & 61 of the COPA 1974 and to the Associated British Standard COP BS 5228:2009 for noise control on construction sites. Statutory requirements are laid down for control of noise during works of construction and demolition and you are advised to contact Environmental Health regarding noise control requirements.

Clearance and burning of existing woodland or rubbish must be carried out without nuisance from smoke etc to nearby residential properties. Advice on minimising potential nuisance is available from the Council's Environmental Health Team.

Plant and machinery used for demolition and construction shall only be operated within the application site between 0800 hours and 1900 hours on Mondays to Fridays, between 0800 hours and 1300 hours on Saturdays and at no time on Sundays and Bank Holidays.

Vehicles may only arrive, depart, be loaded and unloaded within the general site between the hours of 0800 and 1900 Mondays to Fridays, 0800 to 1300 on Saturdays and at no time on Sundays and Bank Holidays.

Adequate and suitable provision in the form of water sprays should be used to reduce dust from the site.

Prior to the use hereby permitted commencing, Environmental Health should be contacted to ensure compliance with the Food Safety Act 1990 and all relevant statutes.

Prior to the use hereby permitted commencing, Environmental Health should be contacted to ensure compliance with the Health and Safety at Work etc. Act 1974 and all relevant statutes.

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 Kent Structure Plan 1996) and there are no overriding material consideration to indicate a refusal of planning consent.