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| Borough Green Borough Green And Long Mill | 560935 157388 | 14 October 2011 | TM/11/02591/FL |
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| Proposal: | Change of use: restaurant eat-in (Class A3) to restaurant eat-in with deliveries and takeaway (Class A3/A5) |
| Location: | Basement 49 High Street Borough Green Sevenoaks Kent TN15 8BT |
| Applicant: | Mr Aymal Mohammad |

1. Description:

1.1 This is a retrospective application for change of use of the basement level of 49 High Street, Borough Green. The parent planning permission TM/98/00802/FL allows for change of use of part of ground floor and all of lower ground floor from A1 (shop) premises on ground floor to A3 (restaurant). Condition 6 states:

“No hot food shall be sold for consumption off the premises.

Reason: In the interests of highway safety and the free flow of traffic.”

1.2 Since that planning permission, the business has been separated into an Indian restaurant at ground floor level with a pizza restaurant in the basement. The kitchen appears to be shared between the 2 restaurants.

1.3 At the time the above planning permission was granted, takeaway use was in Use Class A3, the same use as a restaurant so, in the past, such conditions were necessary to control the use. Legislation in 2005 separated the sale of hot food for consumption off the premises from restaurant uses in land use planning terms unless incidental/ancillary so a formal change of use needs to be applied for to create mixed A3/A5 use.

1.4 The current application seeks to change the use from A3 to a mixed A3/A5 use to allow for a significant delivery and take away of hot food. The application as originally submitted was for home delivery service only but has been amended to also include takeaway sales and further public consultation has been undertaken in relation to the amendment.

2. Reason for reporting to Committee:

2.1 Councillor Evans has requested the application be dealt with at Committee due to concerns over the takeaway use.

3. The Site:

- 3.1 The site lies on the western side of the High Street (A227), just north of the junction with Western Road. Directly north lies the London to Maidstone railway line. Attached to the southwest of the building are two cottages, whilst the upper floors are residential.
- 3.2 The basement area to which this application relates is currently a pizzeria restaurant and is accessed via a separate internal staircase from a ground floor restaurant which is occupied by an Indian restaurant.
- 3.3 Within the same building but adjoining to the north at ground floor level is a separate wine bar/bistro. The latter was recently granted planning permission under ref TM/10/02787/FL for hot food takeaway of a restricted number of food items that did not include any primary cooking on the premises.
- 3.4 The site lies within the built confines of Borough Green which is defined as a Rural Service Centre for the purposes of Policy CP22 of the Tonbridge and Malling Borough Core Strategy 2007. The site lies within the District Centre of Borough Green which defines the retail centre through Policy R1(1)(a) of the Tonbridge and Malling Development Land Allocations Development Plan Document 2008 and its associated Changes to the Proposals Map document.

4. Planning History:

MK/4/47/251 grant with conditions 4 February 1948

New Shop Front.

MK/4/66/410 grant with conditions 19 August 1966

Outline application for alterations and extension to premises, and erection of new shops with maisonettes over and vehicular access for Messrs. Clarke Bros., Ltd.

MK/4/70/376 Application Withdrawn 27 February 1973

Outline application for alterations and extension to previous, erect 5 new shops with dwellings over, garages, parking and new access.

TM/75/1228 grant with conditions 28 September 1976

Formation of car park and construction of access.

TM/98/00802/FL Grant With Conditions 20 October 1998

change of use of part ground floor and all of lower ground floor from A1 (shop) to A3 (restaurant) and ancillary works

TM/99/02099/FL Grant With Conditions 24 July 2000

change of use of shop premises on ground floor to wine bar/bistro

TM/99/02327/RD Grant 15 June 2000

details of extract unit submitted pursuant to condition 4 of planning permission TM/98/00802/FL: change of use of part ground floor and all of lower ground floor from A1 (shop) to A3 (restaurant) and ancillary works

TM/06/01618/FL Approved 20 December 2006

Replacement windows to accommodate disabled entrance

TM/10/02787/FL Approved 29 March 2011

Removal of condition 6 of TM/99/02099/FL (change of use of shop premises on ground floor to wine bar/bistro) to allow for ancillary hot food take away at ground floor level (Bar K)

5. Consultees:

- 5.1 PC: No objections but it is considered unnecessarily restrictive practice not to allow takeaway use.
- 5.2 KHS: No objections.
- 5.3 DHH: No objections.
- 5.4 Private Reps (13/2R/0X/0S): Objections to the home delivery and the takeaway proposals have been received from one neighbouring residential property. The objection refers to the takeaway application including the ground floor of the Indian restaurant but the application papers are now clear that it only relates to the basement/lower ground floor. Objections relevant to the basement as applied for are summarised as follows:
 - The Clokes' building (aka Bridge House) in Borough Green is one of the village's most prominent and historic buildings. It is of a very attractive design and at the top of the High Street overlooking the centre of the village and opposite the primary school. TMBC's character appraisal identified it as 'a local landmark'. Occupants are a number of residential premises (two houses, three flats) and a single commercial space (split into two trading sites ~ the ground floor and the lower ground floor [basement]). My property (49A), and number 47 High Street, adjoins the above mentioned premises (in the same building).
 - The premises identified by the applicant are used by two restaurants in the combined area ~ Pimmyz Pizza and Kaaree's (an Indian restaurant and take-away). Both actively advertise and promote take-away and collection food

services. TMBC's planning enforcement department has been aware of a possible breach at the site for a very long time. There was also a large objection to any take-away proposals when recently applied for by the ground floor premises. This was largely refused but coffees etc reasonably permitted.

- Residents, who would presume businesses are running within the correct planning parameters, would generally suffer in silence as opposed to raising concerns to TMBC's planning department for no obvious reason. Therefore, I reasonably request weight is not given to any existing period of operation as a means to acceptance.
- As the operators have also recently leafleted their customer 'collection/take-away' option to a very wide catchment area I would be interested how a planning covenant could be effectively implemented to ensure the general public (and operators) do not make assumptions that the business operates as per any other take-away business.
- Pimmyz – their business now appears to be largely sub-letting their premises to Kaaree's. I therefore expect a restriction would have very little impact to this side of their business.
- The applicant's premises has four designated parking spaces shared between the three businesses in the building (1 bar and 2 restaurants). The spaces are for all customers, staff and delivery vehicles. In front of the parking spaces is a right of way driveway to residential premises and a residents' car park.
- Customers and delivery vehicles blocking access for residents is a frequent problem. Residents must leave their car (next to the outside drinking area) to track customers/delivery drivers in the bar or basement (those with children have a greater concerns ~ abuse has been received for asking people to move vehicles).
- Customers/drivers exiting from the side of the building (to the smoking area) walk straight into the path of the driveway access. This is obviously a danger. The active smoking area is positioned in the car park and 1 metre from the driveway.
- The entrance is located on a blind and busy corner.
- Any increase of delivery vehicles would exacerbate the existing problems. TMBC should also strongly consider imposing much better marking and monitoring of the small parking and drive area. The joint use of the right-of-way-drive and the car-parking spaces as a smoking and standing area for customers could easily result in serious vehicle accident or injury. It is currently a risk and a nuisance. Furthermore, common blocking occurrences cause undue stress.

- The site has very limited areas for any waste storage. Currently the businesses leave their waste/debris/junk/storage in their car park, the access driveway or commonly [without permission] on the residents' private land. Take-away delivery services adds to this problem with greater industry waste, and even more limited space due to increased vehicles.
- Waste from three commercial businesses has become a real concern and I would request greater direction from TMBC to designate where waste, or loose commercial items, can or cannot be stored. It is currently anywhere where a space can be found or is spilling over to private land.
- The premises have recently re-instigated a previously disused (5+ years) commercial extraction system. The noise generated can be heard throughout the building and is constantly operating from mid-day to half past midnight. Delivery vehicles operating to 11.30pm could also cause disturbance.
- We would also appreciate it if noise impact could also be clarified with time limits on the extraction system being used. As per the building's enforceable planning covenants, no extractor should be operating above 30db and new noise dampening measures should be insisted on. Shutting it down at the closing time of 11.30pm, or earlier, would be benefit to those trying to sleep nearby. Noise impact from delivery vehicles should also be considered.
- Similar businesses have a detrimental effect on the visual appearance of the town centre. The village centre already has numerous take-away restaurants including an existing pizza and two other Indian take-away restaurants. Permitting two new similar businesses (pizza and Indian) would not be utilising the town's commercial space to best effect and would be far away from a good mix for the town.
- TMBC reports have recently highlighted the disproportionate number of take-aways in the village and there has been strong local objection to allowing even more similar business [with likely harm to town's overall character].
- There are now three A3/A5 businesses operating from the site which was originally built and for a long time successfully used for A1 use only. It is very evident the access, storage and shared purpose create a number of issues. The applicant states very limited activity though TMBC must consider the issues highlighted above and implications should business significantly increase.
- The applicant asserts, without stated rationale, that the changes would not be contrary to policy CP24. TMBC should put a clear line in the sand to indicate an objective for the premises to be used only for its originally approved purpose. Setting precedents for rewarding disregard for planning regulations

should also be a consideration. Ultimately, there are no varying factors that exist now, than in 1998, which should remove the original conditions attached to the building.

- The historic building is a mixed residential use and the planning restriction against takeaway activities preserve a reasonable standard of living for the local residents and to preserve the dignity of the building.

6. Determining Issues:

- 6.1 The NPPF in paragraph 23 requires Councils to promote competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of town centres. Paragraph 17 of the NPPF includes as a core principle the need to always seek a good standard of amenity for all existing and future occupants of land and buildings.
- 6.2 As set out above, the site lies within the defined District Centre of Borough Green subject to Policy CP22 of the TMBCS. The site lies within the District Centre of Borough Green which defines the retail centre through Policy R1(1)(a) of the DLA DPD. Policies CP1 and CP24 of the TMBCS relate to residential amenity and safety generally. Policy SQ8 of the MDE DPD relates to highways issues and says that Development proposals will only be permitted where they would not significantly harm highway safety and where traffic generated by the development can adequately be served by the highway network.
- 6.3 The original permission sets the precedent for the use of the building as a restaurant. Therefore, it is my view that the impacts that need to be assessed in this case are those that arise from an existing restaurant being able to sell pizzas through home delivery and as a takeaway. This includes issues of traffic, retail vitality and viability and residential amenity including that of noise and disturbance from visiting customers.
- 6.4 KHS raises no objection on highway safety grounds although does advise that the applicant needs to be reminded of the possible dangers from delivery staff trying to meet target delivery times. Members are advised that the grounds for imposing the condition on takeaway use in the 1998 planning permission was highway safety but KHS has revised its views on this matter now the case has been examined on its individual merits.
- 6.5 This part of Borough Green has a fish and chip shop opposite and a Chinese takeaway by the station. Certain hot foods and drinks are permitted to be taken away from the adjoining bistro albeit this must be without any primary cooking. On the basis of KHS advice and these local precedents, it is not reasonable in my view to refuse the application on highways safety grounds for takeaway or home delivery in the centre of the village.

- 6.6 DHH has raised no objection in relation to Environmental Protection issues. In the light of the existing restaurant use, there is not a sustainable argument that there should be any worsening of matters such as noise, odours and smells from the introduction of a mixed A3/A5 use to an established restaurant. However, the application does present an opportunity for a more modern odour/noise condition to be imposed on the extract system in operation.
- 6.7 The 3 commercial uses in this building (2 restaurants and a wine bar/bistro) already result in customer attraction and vehicular comings and goings in the evenings and it is not considered that the addition of the A5 use in itself would add to the noise and activity from customers over and above what should be expected in a district centre where there are already premises with takeaway use in close proximity. The proposal therefore complies with policies CP1, CP24 of the TMBCS and Policy SQ8 of the MDE DPD and the core policies of the NPPF.
- 6.8 In terms of retail vitality and the viability of Borough Green's village centre, Policy CP22 requires that proposals should not harm the vitality or viability of an existing retail centre by undermining the balance of uses or harming their amenity. In district centres such as Borough Green, it is necessary to consider if the loss of A1 retail to non-shopping uses can erode the attractiveness of the centre for retail trips. In this case, the use of the premises is already a non-retail use. It is proposed to add takeaway and home delivery to a retained restaurant use and in such an instance, in my view, it cannot be argued to harm the vitality and viability of the village centre such as to warrant refusal of permission and any necessary enforcement action to be taken. There is no conflict with policy CP22 nor paragraph 23 of the NPPF.
- 6.9 Members will note the strong objection from a neighbouring resident on additional matters to those already addressed above. It is clearly the case that the existing juxtaposition of residential properties above and connected to the 3 commercial uses in one building creates a number of difficulties for the objector such as the waste collection, smoking areas, customer parking, and deliveries conflicting with the residential parking spaces etc. However, those matters cannot be used to justify a refusal of an application for the inclusion of a partial A5 use if none of those matters are materially worsened. However, it does present an opportunity for conditions to be imposed whereby the external areas for each activity for use should be clearly demarcated.
- 6.10 This application needs to be considered on its own merits. Similarly, the retrospective nature of the use, whilst unfortunate, cannot be used as reason to refuse the application. I do not share the opinion of the objector that uses including an element of A5 are incompatible in principle for locally important/attractive buildings such as Clokes House.

6.11 However, as suggested by the objector, the application does create an opportunity to impose conditions to deal with concerns where they are land use related. In addition, the environmental protection and planning enforcement teams can examine the matters raised to see if action is warranted. Relevant conditions from TM/98/00802 have already been brought forward where relevant.

6.12 In conclusion, I recommend that retrospective permission is given subject to suggested conditions below.

7. Recommendation:

7.1 **Grant Planning Permission** as detailed by Other APPLICATION FORM Amended dated 14.10.2011, Letter dated 19.09.2011, Letter dated 14.10.2011, Notice LANDLORD dated 14.10.2011, Notice 37 BELL ST dated 14.10.2011, Notice 51A HIGH ST dated 14.10.2011, Notice 51B HIGH ST dated 14.10.2011, Notice 51C HIGH ST dated 14.10.2011, Drawing BASEMENT dated 14.10.2011, Drawing GROUND FLOOR dated 14.10.2011, Location Plan dated 19.09.2011 subject to the following:

Conditions

1 Within 1 month of the date of this decision, details of car parking and servicing of the premises shall be submitted for the approval of the Local Planning Authority. Thereafter no development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown and vehicular access to these areas must not be obstructed or precluded at any time.

Reason: Development without provision of adequate accommodation for the parking or garaging of vehicles is likely to lead to hazardous on-street parking contrary to Policy CP24 of the Tonbridge and Malling Borough Core Strategy 2007, Policy SQ8 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document 2010 and paragraph 35 of the National Planning Policy Framework 2012.

2 The premises shall not be open for business outside the hours 08.00 to 23.30 on any day. Customers shall vacate the premises by 23.30.

Reason: To protect the amenities of nearby dwellings in accordance with Policies CP1 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007, Policy SQ6 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document 2010 and paragraphs 17, 57, 58, 61, 125 of the National Planning Policy Framework 2012.

3 The premises shall be used for restaurant and ancillary takeaway/home delivery only and shall not be used solely as a Class A5 premises unless otherwise approved by the Local Planning Authority.

Reason: In the interests of the vitality and viability of Borough Green district centre in accordance with policy CP22 of the Tonbridge and Malling Borough Core Strategy 2007 and paragraph 23 of the National Planning Policy Framework 2012.

- 4 No live music shall be played in the premises and the playing of amplified music is to be confined to background music from a domestic type hi-fi system and the noise attributable to the playing of amplified music within the premises shall not be audible at the external façade of the building.

Reason: To protect the amenities of nearby dwellings in accordance with Policies CP1 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007, Policy SQ6 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document 2010 and paragraphs 17, 57, 58, 61, 125 of the National Planning Policy Framework 2012.

- 5 The mechanical exhaust ventilation from the kitchen should accord with requirements and recommendations of the DEFRA 'Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems' and incorporate appropriate noise attenuation measures, grease filters and an odour treatment system. There shall be arrangements for the continuing maintenance of this equipment, and wherever practicable, the units should discharge at high level. The noise from the equipment shall not exceed NR35 at the nearest noise sensitive premises/site boundary.

Reason: To protect the amenities of nearby dwellings in accordance with Policies CP1 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007, Policy SQ6 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document 2010 and paragraphs 17, 57, 58, 61, 125 of the National Planning Policy Framework 2012.

- 6 Within 1 month of this decision, details shall be submitted for the approval of the Local Planning Authority for the outside area to be clearly demarcated to show:
- Residential parking
 - Staff parking
 - Customer Parking
 - Smoking area
 - Refuse storage area.
 - Vehicular/Pedestrian Access as relevant to all areas above

The areas shall be demarcated as such within 1 month of the approval of the details and retained for the relevant uses thereafter.

Reason: To ensure no adverse impact upon amenity and safety in accordance with Policies CP1 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007, Policies SQ6 and SQ8 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document 2010 and paragraphs 17, 35, 57, 58, 61, 125 of the National Planning Policy Framework 2012.

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