



- 3.2 The common boundary to the north of the application site has a close-board fence. The boundaries to the east and south have brick walls, which are approximately 2m in height.
- 3.3 A pedestrian access runs behind the rear of the properties in Malling Road, separating the dwellings from direct access to their rear gardens. Access is gained to the pedestrian route adjacent to the application site. No.43 Malling Road, is physically separated from the access path by an existing 2m high fence.
- 3.4 Opposite the proposed development, to the south, is a commercial, single storey car repair garage, which is a similar style of development to that proposed, in so far as it is located to the rear of residential properties.
- 3.5 To the north of the application site is the rear garden of no.41 Malling Road.
- 3.6 The application site is currently used for parking, accessed via an existing vehicle drop crossing. The application site is visually unattractive, with a partially removed wall and items such as rubble within it.

**4. Planning History:**

TM/58/10523/OLD    Grant with Conditions    23 October 1958

Formation of bathroom.

TM/72/10830/OLD    Grant with Conditions    12 October 1972

Change of use from Barbers shop to living accommodation for Mrs. Smythe.

TM/81/11265/FUL    Grant with Conditions    18 September 1981

Erection of six feet high side boundary wall and construction of new vehicular access to new by-pass access road.

TM/86/11069/FUL    Grant with Conditions    14 April 1986

Detached garage.

TM/04/02066/OA    Refuse    28 July 2004

Construction of 2 no. new dwellings.

TM/04/03842/OA    Refuse    29 December 2004

Construction of 2 No. new 1 bed homes.



Surface water from private areas is not to discharge onto the public highway.

These proposed arrangements are not ideal but do go some way to addressing the previous reasons for refusal. I find that now I am able, on balance to recommend a support of this proposal.

*Additional comments received 25/09/09:-*

It is noted that the amended application site plan now includes the replacement parking for No.43.

### 5.3 DHH:

Environmental Protection – Earlier comments would still apply; namely from the plans I note that the proposed kitchen extractor vents towards a car park. I cannot see that there are any sensitive properties which would be directly affected by noise or odour from the extractor, so I have no objections to this application.

Food & Safety – The plans provide insufficient detail to comment on the layout of the kitchen. Please advise the applicant to make early contact with the Food and Safety team to discuss the layout of the kitchen to avoid unnecessary alterations at a later date. The food business operator will also be required to food register with the Council.

The toilet cannot open into an area where food is stored/prepared. The plans do not show a lobby to the toilet. A ventilated lobby will be required. This is a requirement of EC Regulation 852/2004.

Waste Management Services – This is a business/trade property and therefore must comply with all Duty of Care regulations.

*Additional comments received 24/09/09:-*

Food and Safety – The applicant should also be aware of the requirements of the Control of Asbestos Regulations 2006, which requires asbestos containing materials to be managed to prevent further release of asbestos fibres e.g. during the refurbishment of the building. Further details can be found at HSE website [www.hse.gov.uk/asbestos](http://www.hse.gov.uk/asbestos).

### 5.4 EA: No objections raised.

### 5.4 Private Reps 0X/7R/0S + Art 8 Site: 7 letters of objections received and 2 additional letters received following consultations, raising the following points:-

- Additional noise from visitors; including car doors, and the extractor fan.
- Environmental Health problems from extra refuse, which back onto a residential rear garden, and smells from extractor fans.

- Anti-social behaviour, youths congregating leading to intimidation and security issues for neighbouring residential properties.
- Out of keeping with the surrounding residential area.
- Litter problems.
- Inadequate parking and car park at full capacity, so visitors block neighbouring premises.
- Lack of need and shop diversity.
- The rear access to properties 35-42 is adjacent to the “in” entrance, which will cause a hazard to this access.
- Hazard to road users as on a busy junction – current parking plan includes double yellow lines along this stretch of road.

**6. Determining Issues:**

- 6.1 Planning permission has already been approved for the erection of a single storey lock up shop for A1 retail use. Therefore, the principle of development within this area is acceptable.
- 6.2 Policy CP22 of the Tonbridge and Malling Core Strategy requires that new retail developments maintain or enhance the vitality and viability of existing retail centres. The use classes suitable in retail centres are B1, A1, A2, A3, A4 and A5. This site falls outside of the Snodland Retail Centre.
- 6.3 Policy CP24 of the Tonbridge and Malling Core Strategy requires good design and quality in new developments, and a respect for the site and its surroundings.
- 6.4 The main considerations in dealing with this planning application are the physical impact of the proposal on the neighbouring residential dwellings, including the installation of a ventilation flue, and the associated impact on the area as a whole, through deliveries, visiting customers, noise, parking etc.
- 6.5 The new unit is proposed in the same location as the previously approved single unit and is the same size and design. Concern has been raised that the proposed commercial unit is out of keeping with the surrounding residential area. However, as the proposed unit will be situated opposite a commercial, single storey car repair garage, which is a similar style of development to that proposed, in so far as it is located to the rear of residential properties, it is not considered that this is the case. Furthermore, the principle of the development was agreed under previous planning approvals for an A1 retail use.

- 6.6 The proposed unit is to be located at the rear of the residential garden of No.43 Malling Road, with the rear elevation of the unit, to the north, being set approximately 1.2m from the common boundary with No.41, except where the garage staggers back. Concern has been raised that there may be environmental issues raised by the application, through the storage of refuse and location of the extract flue. As the extract flue is to be located on the east elevation and extends 800mm from the roof slope and is a maximum height of 4.2m above ground level, facing away from the residential properties and towards the car park it is not considered that the flue would cause a detrimental impact on the neighbouring residential properties.
- 6.7 The proposed refuse storage area is shown to be located to the rear of the new unit, adjacent to the common boundary with No.41 Malling Road, with the refuse collection point shown to the side of the proposed garage, and rear of the proposed parking space. DHH has not raised any objections to the proposed location of the refuse storage area, however, a condition can be attached to the decision to ensure that adequate screening of the refuse is put in place.
- 6.8 There is one door shown to be located in the rear elevation of the building, giving access to the refuse area, which faces towards No.41 Malling Road. It is not considered that this door will cause overlooking as there is existing boundary treatment in situ. There are no windows proposed in the elevations fronting the neighbouring residential properties curtilage area or the car park, therefore, it is not considered that there will be any overlooking or a detrimental impact on the privacy of the adjoining residential properties. Planning permission would be required to insert any additional openings at a later stage.
- 6.9 The front elevation of the proposed unit shows two large windows and an access door, and the garage door which is set back from the front elevation of the new building. The front elevation of the unit is set back from the edge of the application site between 1.4m and 2m. Vehicular and pedestrian access into the unit is proposed from Rocfort Road, on the south elevation, where the proposed parking space and garage for the new unit, and also the 2 parking spaces for No.43 Malling Road are also located. Objections have been received from local residents regarding parking problems and highway safety as the access to the rear of the residential properties is in close proximity to the proposed "in" access, and it is not considered that there is adequate parking at the property and views that the road is already dangerous. As the proposals now include an "in" and "out" driveway and parking for the proposed use and for No.43 Malling Road, KCC Highways have not raised any objections to the proposals and it is not considered that the new unit will have a detrimental impact on highway safety.
- 6.10 The unit is shown to be constructed of concrete interlocking tiles over rendered elevation with brick plinth, so is not considered to be out of keeping with the surrounding residential properties.

- 6.11 As the proposed unit is single storey and at the rear of the garden, just under 9m from the rear of the dwelling house, it is not considered that it will have a detrimental impact on the property at no.43 or neighbouring properties in terms of loss of daylight or sunlight.
- 6.12 Objections have been raised by local residents that the proposed use is unnecessary to the area, which already has an ample number of takeaway shops. It is not the role of the Planning Department to regulate competition of similar use classes, therefore, this matter cannot be considered as part of the planning application.
- 6.13 Objections have also been raised that the proposed use will cause an increase in anti-social behaviour in the area. The Crime Reduction Officer did not raise any objection to the previous proposal for the same use. Informatives can be added to advise the applicants on some ways to reduce the likelihood of anti-social behaviour. Furthermore, a condition will be attached to restrict the hours of operation to help alleviate these concerns.
- 6.14 Therefore, on balance, I find this proposal acceptable, subject to conditions, now that the previous reason for refusal has been overcome.

## **7. Recommendation:**

- 7.1 **Grant Planning Permission** in accordance with the following submitted details: Plan 1G dated 28.08.2009, Design and Access Statement dated 04.06.2009, Details Extract equipment dated 04.06.2009, subject to the following:

### **Conditions / Reasons**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

2. No development shall take place until details and samples of materials to be used externally have been submitted to and approved by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not harm the character and appearance of the existing building or the visual amenity of the locality.

3. The use shall not be commenced, nor the premises occupied, until the area shown on the submitted layout as vehicle parking space has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country

Planning (General Permitted Development) Order 1995 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to hazardous on-street parking.

4. The parking spaces shown on the submitted plan shall be kept available at all times for the parking of private motor vehicles.

Reason: Development without the provision of adequate vehicle parking space is likely to lead to hazardous on-street parking.

5. No building shall be occupied until the area shown on the submitted plan as the access arrangements have been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent 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 or in such a position as to preclude vehicular access to this reserved turning area.

Reason: Development without provision of adequate access facilities is likely to give rise to hazardous conditions in the public highway.

6. The development hereby approved shall be carried out in such a manner as to avoid damage to the existing trees, including their root system, or other planting to be retained as part of the landscaping scheme by observing the following:

- (a) All trees to be preserved shall be marked on site and protected during any operation on site by a fence erected at 0.5 metres beyond the canopy spread (or as otherwise agreed in writing by the Local Planning Authority).

- (b) No fires shall be lit within the spread of the branches of the trees.

- (c) No materials or equipment shall be stored within the spread of the branches of the trees.

- (d) Any damage to trees shall be made good with a coating of fungicidal sealant.

- (e) No roots over 50mm diameter shall be cut and unless expressly authorised by this permission no buildings, roads or other engineering operations shall be constructed or carried out within the spread of the branches of the trees.

- (f) Ground levels within the spread of the branches of the trees shall not be raised or lowered in relation to the existing ground level, except as may be otherwise agreed in writing by the Local Planning Authority.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect the appearance and character of the site and locality.



7. (a) If during development work, site contaminants are found in areas previously expected to be clean, the work shall cease immediately and a remediation strategy shall be agreed with the Local Planning Authority and implemented by the developer.
- (b) Any soil brought on site should be clean and a soil chemical analysis shall be provided to verify imported soils are suitable for the proposed end use.
- (c) A closure report is provided by the developer delineating (a) and (b) above and other issues such as any pollution incident during the development.

Reason: In the interests of public safety

8. The use hereby approved shall only operate between the hours of 9am to 6pm Monday to Saturday and at no time on Sundays, Bank or Public Holidays.

Reason: In the interests of the residential amenities of the occupants of the adjacent properties.

9. No development shall commence until details of a scheme for the storage and screening of refuse has been submitted to and approved by the Local Planning Authority. The approved scheme shall be implemented before the development is occupied and shall be retained at all times thereafter.

Reason: To facilitate the collection of refuse and preserve visual amenity.

10. This permission shall be an alternative to the following permissions and shall not be exercised in addition thereto, or in combination therewith. (Permissions granted on 04.04.2007 and 22.05.2008 and under references TM/06/02245/OA and TM/08/00791/FL).

Reason: The exercise of more than one permission would result in an overintensive use of the land.

### **Informatives**

1. With regard to the construction of the pavement crossing, the applicant is asked to consult The Community Delivery Manager, Kent County Council, Kent Highway Services, Double Day House, St Michaels Close, Aylesford Tel: 08458 247 800.
2. This permission does not purport to convey any legal right to undertake works or development on land outside the ownership of the applicant without the consent of the relevant landowners.
3. Surface water from private areas is not to discharge onto the public highway.

4. Regarding the application of Food Hygiene Regulations under the Food Act 1984, the applicant is advised to contact the Director of Health & Housing, Tonbridge & Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ. Tel: (01732) 844522.
  
5. The granting of this permission does not purport to convey any legal right to block or impede any private right of way which may cross the application site without any consent which may be required from the beneficiaries of that right of way.

Contact: Vicky Bedford