

**Snodland**  
Snodland East

**570236 161696 7 May 2010**

**TM/10/01148/FL**

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Proposal: Construction of single lock-up shop, Class A5 hot food take-away  
Location: 43 Malling Road Snodland Kent ME6 5AA  
Applicant: Mr A Langroudi

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**1. Description:**

- 1.1 Full planning permission is sought to construct a single storey lock up shop unit for use as a Class A5 hot food takeaway (pizza). The proposed building would be 8m wide by 8.5m deep, would be designed with a hipped and gabled roof and would incorporate a basement area. The proposed shop would be 5.2m to the ridge of the roof and 3.1m to eaves level.
- 1.2 It has been stated that the premises would be open every day between the hours of 6pm and 10pm and would employ two members of staff.
- 1.3 In association with the building it is proposed to create a new vehicle in/out system towards the western side of the site from Rocfort Road. A single garage would be constructed adjacent to the western side of the building with 2 further open parking spaces to be created for the occupants of number 43.
- 1.4 Along the northern and western boundaries of the site an acoustic fence is shown in accordance with a submitted noise survey report.

**2. Reason for reporting to Committee:**

- 2.1 The application is being reported to committee at the request of a local ward member, on behalf of residents in Malling Road. Cllr Maloney has concerns that this would be an inappropriate change of use in a residential area and that a take-away would cause undue noise and disturbance. The introduction of a take-away would damage the character of the area. Reference has also been made to highway problems related to regular and rapid turnover of vehicles and increased possibility of accidents.

**3. The Site:**

- 3.1 Number 43 is an end of terrace house set on the eastern side of Malling Road, to the north of its junction with Rocfort Road. The property lies within the urban confines in a mixed use area consisting of some local businesses as well as residential premises. To the east is a public car park.
- 3.2 The application relates to a rectangular piece of land measuring 19.8m x 11.1m positioned beyond a private right of way to the rear of the residential terrace. The

land was previously part of the rear garden of number 43 but in more recent times has been used for vehicle parking. Access is gained via a dropped kerb.

- 3.3 The application site is bounded to the north by a close boarded fence whilst along the eastern and southern boundaries are brick walls approximately 2m in height. To the north is the rear garden of number 41 Malling Road, whilst to the south on the opposite side of Rocfort Road is a commercial car repair garage incorporating a single storey building.

#### 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

TM/06/02245/OA Approved 4 April 2007  
Single storey lock up shop ( Class A1)

TM/08/00791 Approved 22 May 2008  
Single lock up shop class A1 with attached garage

TM/08/02224/FL Refuse 8 January 2009

Construction of single lock up shop Class A5 takeaway, with attached garage



- Fast food shop should not be located close to a school.
- There is no need for more take-aways. If necessary these should be located in the town centre.

**6. Determining Issues:**

- 6.1 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.
- 6.2 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.
- 6.3 Members may recall that there have been a number of applications in recent times in respect of development at this site, as summarised below:
- In 2004 outline permission was twice refused for two dwellings.
  - Under reference TM/06/2245 outline consent was granted for a single storey lock up shop (Class A1) with attached garage.
  - Under reference TM/08/791 permission was granted for a single lock up shop Class A1 with attached garage.
  - A further application TM/08/2224 for a lock up shop for use as Class A5 takeaway was refused in 2009 at committee where Members considered that “The development would create unacceptable additional hazards to traffic by virtue of the lack of off street parking and is likely to lead to potential customers undertaking unacceptable circulating manoeuvres for alternative parking options”.
  - Under TM/09/1356 permission was refused for the construction of a single storey lock up shop, Class A5 takeaway. Members determined to refuse consent on the basis that the proposed use would have an adverse impact on the residential amenities of the neighbouring properties, by virtue of noise and disturbance from the comings and goings to the parking arrangements at the premises, contrary to Core Strategy policy CP24.
- 6.4 As with the previous applications for take-away uses the issues that need to be taken into consideration include the 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. However, given the similarities between the proposal and the most recently refused application TM/09/1356, the principal consideration now is

whether the amendments that have now been introduced are sufficient to overcome the reason for refusal cited on that occasion.

- 6.5 From the above it can be seen that the principle of developing this site for a single lock up A1 shop was established in 2007 and reiterated in 2008. The current application is the same as the scheme refused under TM/09/1356 in terms of size, design and appearance. The exception is that an Environmental Noise Impact Assessment has been submitted to address Members' previous concerns.
- 6.6 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 insofar 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 including a single storey building was agreed under previous planning approvals for an A1 retail use.
- 6.7 The proposed unit is to be located at the rear of the residential garden of number 43 Malling Road, with the rear northern elevation of the unit being set approximately 1.2m from the common boundary with number 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.
- 6.8 The proposed refuse storage area is shown to be located to the rear of the new unit, adjacent to the common boundary with number 41 Malling Road, with the refuse collection point shown to the side of the proposed garage and rear of the proposed parking space. The Environmental Health Officer 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.
- 6.9 There is one door shown to be located in the rear elevation of the building, giving access to the refuse area, which faces towards number 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.

- 6.10 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 side of the site, where access to the proposed parking space and garage for the new unit and also the 2 parking spaces for number 43 Malling Road are also located. Objections have been received from local residents regarding properties in close proximity to the proposed “in” access and because it is not considered that there is adequate parking at the property and views are expressed that the road is already dangerous. As the proposals now include an “in” and “out” driveway and parking for the proposed use and for number 43 Malling Road, KCC Highways has not raised any objections to the proposals and it is not considered that the new unit will have a detrimental impact on highway safety.
- 6.11 As with the previous application the KCC Highways Engineer has confirmed that he has no objections to the formation of a vehicle in/out system subject to safeguarding conditions and informatives.
- 6.12 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.
- 6.13 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 number 43 or neighbouring properties in terms of loss of daylight or sunlight.
- 6.14 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 Local Planning Authority to regulate competition of similar use classes, therefore this matter cannot be considered as part of the planning application.
- 6.15 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 can be attached to restrict the hours of operation to help alleviate these concerns.
- 6.16 The previous application was refused on the grounds that the comings and goings to the parking arrangements would create noise and disturbance to nearby residents. To address this problem the applicant has commissioned an environmental noise impact assessment which included measurements of ambient noise recorded during the proposed opening hours. The measurements relate to parking events only rather than continuous running of motor engines.

- 6.17 The report concludes that a proprietary acoustic fence would be required along the northern and western boundaries of the site. In addition it is recommended that a sign is introduced requesting that car engines are not left running and that access points to the site are secured at times outside the hours of trading to prevent casual or uncontrolled use of the parking area, which could cause noise disturbance. The report indicates that motor vehicles using the site are unlikely to be so noisy as to exceed the recommended levels for noise within the neighbouring properties.
- 6.18 In response to the noise impact assessment the Environmental Health Officer confirms that he agrees with the consultants findings that noise from vehicles accessing the site should not pose problems to residents in the locality. As a result the previously identified concerns about possible noise problems appear to have been satisfactorily addressed.
- 6.19 From a food safety point of view the Environmental Health Officer states that the plans promote insufficient detail to comment on the layout of the kitchen. The applicant will need to contact the Food and Safety team to discuss the kitchen layout and a ventilated lobby to the WC, to meet EC Regulations.
- 6.20 All aspects of this sensitive proposal together with the concerns of the residents have again been given detailed consideration. The previous reason for refusal has been overcome and the proposal is found to be acceptable subject to appropriate conditions.

## **7. Recommendation:**

- 7.1 **Grant Planning Permission** in accordance with the following submitted details: Design and Access Statement dated 07.05.2010, Report dated 07.05.2010, Details dated 07.05.2010, Drawing 1H dated 07.05.2010, 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 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. No building shall be occupied until the area shown on the submitted plan as turning area 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 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 turning facilities is likely to give rise to hazardous conditions in the public highway.

5. 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.

6. 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.

7. The use hereby approved shall only operate between the hours of 6pm to 10pm Monday to Sunday.

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



8. 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.

9. This permission shall be an alternative to the following permission(s) and shall not be exercised in addition thereto, or in combination therewith. (Permission(s) granted on 22.5.2008 and under reference(s) TM/08/791).

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

10. No development shall take place until details of an acoustic fence, to be constructed along the northern and western boundaries of the site, have been submitted to and approved by the Local Planning Authority. The approved fence shall be erected in accordance with the approved details before use of the building commences, and this fence shall be retained at all times thereafter.

Reason: In order to safeguard the aural amenity of the occupiers of the neighbouring properties.

### **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 shall not 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 consent which may be required from the beneficiaries of that right of way.
6. You are advised to consider the possibility of displaying a sign advising drivers not to leave their car engines idling whilst visiting the site, subject to the need to obtain any necessary advertisement consent from the Local Planning Authority.

Contact: Hilary Johnson