

4. Planning History:

TM/01/00090/FL Grant With Conditions 23 August 2002

Change of use and conversion of existing retail unit and extension of existing flat to provide 3 residential units

TM/58/10875/OLD Grant with Conditions 10 July 1958

Alterations to shop front.

TM/74/11556/OLD Refuse 19 March 1974

Illuminated fascia sign.

TM/81/10239/FUL Application Withdrawn 4 June 1981

Shopping Precinct Stage II.

TM/81/10242/FUL Application Withdrawn 4 June 1981

Shopping Precinct, Stage 1 incorporating restaurant.

TM/81/11349/FUL Grant with Conditions 26 June 1981

Replacement of existing pre-fabricated storage building with permanent single storey extension including sanitary accommodation all ancillary to retail shop.

TM/04/00743/FL Grant With Conditions 28 May 2004

Change of use from retail electrical/TV shop to retail tea room/gift shop

TM/04/00777/AT Grant With Conditions 28 May 2004

Provision of 2 no. illuminated fascia sign boards

TM/04/03686/LDCE Certifies 7 December 2004

Lawful Development Certificate Existing: Residential use of premises

TM/05/01353/FL Grant With Conditions 29 July 2005

Variation of condition 2 of consent ref TM/04/00743/FL (Change of use from retail electrical/tv shop to retail tea room/gift shop) to allow sale of heated food, variation of condition 3 to vary opening hours and variation of condition 4 to allow continued Sunday opening

TM/05/01355/RD Grant With Conditions 29 July 2005

Details submitted pursuant to condition 6 (tea garden details) and condition 8 (refuse storage) of consent ref TM/04/00743/FL (Change of use from retail electrical/tv shop to retail tea room/gift shop)

5. Consultees:

5.1 PC: No objection.

5.2 DHH: Comments regarding the need for a ventilation system – no longer relevant. Recommend the use of tea garden to be limited to between the hours of 09.00 – 20.00 Monday to Sunday and no music be played at any time. The details of any external lighting shall be submitted for consideration. The requested plan of the proposed outside seating has been received but in the absence of any assessment of the likely impact it is appropriate, if permission is granted, to allow a temporary permission of 12 months to enable the effects of the intensified use to be assessed.

5.3 Private Reps + Article 8 + CA and LB Advert: 13/0X/4R/0S four letters of objection have been received.

- Does the application constitute a variation or total change of use?
- The increased numbers of people permitted in the garden has previously been refused and would potentially be used as a beer garden with the associated intrusive noise levels and general loss of amenity.
- Late night opening has already begun and the noise from the property is intrusive and the matter has already been reported to the Council's Environmental Health Department. Already disturbance from smokers talking and littering with cigarette ends.
- Vehicle movements at closing time with engines running and people shouting causes unacceptable noise and disturbance. The double parking and blocking of accesses to 3, 5 and 5A High Street compromise highway safety.
- Increase in property value of the premises would result in a decrease in value of the adjacent properties.

- Aylesford already suffers from excess rubbish and late night noise and this proposal will only increase the rubbish and disturbance.

6. Determining Issues:

- 6.1 The site lies within the residential settlement of Aylesford and is immediately adjacent to a residential dwelling. The application must therefore be determined with regard to its potential impact upon levels of residential amenity.
- 6.2 The site also lies within the Aylesford CA and adjacent to a Grade II Listed Building. The application must therefore be determined with regard to its potential impact upon the setting of the adjacent building and the character of the wider area.
- 6.3 As the site lies within the Aylesford settlement it must also be assessed as to how it provides a facility for residents and visitors to the village. The application must therefore be determined with regard to its potential impact upon the economic health and social wellbeing of the wider community.

Extension to opening hours on Saturdays until 11.30pm

- 6.4 Planning permission was granted in 2004 for the change of use of the premises from a retail tv shop to use as a tea room and gift shop. The hours of use of the business were limited by planning condition to the hours of 08.30 to 17.30 Monday to Friday and 09.00 to 17.00 Saturday and Sunday. The Sunday opening was originally only permitted for a year however a variation to this condition was permitted in 2005 to allow for continued Sunday opening.
- 6.5 The Council is aware that a number of events have already been held on a Saturday evening. This matter has been monitored by my Enforcement Team and referred to the Environmental Health Department. However the applicant has confirmed that no further events have yet been arranged. Nevertheless the use of the premises for extended Saturday opening has already commenced.
- 6.6 The application states that the extension to the Saturday opening hours of the teashop is sought in order to hold specific 'one off' themed events. Objections have been received from four neighbours expressing concern regarding noise and an increase in general disturbance and traffic movements.
- 6.7 It is acknowledged that an increase in the movement of people and vehicles would be associated with the increased opening hours. However it must be borne in mind that the site occupies a central village location with other public houses and restaurants. It is therefore reasonable to expect some level of people and vehicular movement on a Saturday evening. The tearoom is modest in size and therefore unlikely to generate excessive levels of movement which would result in an unacceptable impact upon levels of adjacent residential amenity. The concerns of neighbours regarding highway congestion and associated nuisance are noted;

however an easily accessible public car park exists to the south of the site and the likelihood of obstruction of access is limited.

- 6.8 A noise complaint has been previously investigated in 2010 by the Council's Environmental Health Department following a Saturday event at the premises. This complaint did not however necessitate any formal action being taken by the Council with regard to the alleged noise disturbance. It is understood that the source of the alleged noise disturbance was the live music being played at the premises. It must also be noted that the application refers to the intention to use 'piped music'. It is important therefore to assess this aspect of the application with regard to the potential impact upon adjacent residential amenity.
- 6.9 Quite often tearooms and shops play 'background' music. This does not usually require planning permission in itself and appears rarely to be a cause of noise disturbance. The use of 'piped' or general background music is therefore unlikely to have an unacceptable impact upon adjacent residential amenity. However if any complaint were to be received the matter would be investigated by the Environmental Protection Team under the Environmental Protection Act 1990. Similarly the playing of live music, providing it is not amplified is also unlikely to result in unacceptable noise levels and is similar to the levels of noise to be expected from a residential dwelling. It should be noted that the original planning permission was conditioned to prevent music from being played in the tea garden. However it was not considered appropriate to prevent the playing of music within the building itself. Nevertheless it is acknowledged that the playing of amplified live music can be associated with unacceptable noise levels. The application does not provide any details of proposed noise insulation measures and an attached residential dwelling is located to the west. In order to protect the aural amenity of the immediate residential premises it would be appropriate therefore to restrict the playing of amplified music at the premises unless suitable physical noise insulation measures are implemented.
- 6.10 As Members will be aware the Licensing of premises is not something for the consideration of the planning system. It is sometimes difficult to appreciate the different regimes which are both operated by the Council. For clarification please be aware that the premises has a Licence to sell alcohol between the hours of 09.00 and 17.30 from Monday to Sunday. Should the applicant wish to sell alcohol on a regular basis on a Saturday evening then an application to vary the Licence will also need to be submitted. It should also be noted that the premises does not have currently have a Music Licence. Such Licensing applications would need to be advertised and residents would be given the opportunity to comment. The Saturday evening events of 2010 however were operated under a Temporary Events Notice (TEN). This allows for the operation of 'one off' events. The police are consulted on such notices but there is no opportunity for residents to comment.

6.11 The Council's Licensing Team confirms that no application to vary the existing licence has been received nor has any further Temporary Event Notice been applied for. I reiterate however that both the alcohol licensing and the TENs do not form part of the planning process. However it may be of interest to note that the number of TENs is limited to 12 times a year. Therefore if the applicant wished to host further 'one off' events through the use of a TEN then the number of events would be limited to 12 a year.

Extended use of the Tea Garden

6.12 The 2004 planning permission also included the use of the garden in connection with the tea shop, although this was originally only permitted for a year. The details of the layout of the tea garden were subsequently approved in 2005, although the number of tables and chairs were restricted to 3 tables and 12 chairs. The application seeks to extend the number of chairs to 20 and an indicative layout has been submitted.

6.13 The Council's Environmental Protection Manager has commented on the need to restrict the night use of the tea garden and prohibit the playing of music in the tea garden in view of the potential for noise disturbance to local residents. I concur with this view; however the application seeks to extend the opening hours of the café only and does not include an extension to the opening hours of the tea garden. Nevertheless this can be ensured by planning condition. Similarly planning conditions 5 of TM/04/00743/FL and 3 of TM/05/01353/FL prevent the playing of music in the tea garden at any time and this application does not seek to alter this position. Once again however this can be ensured by the imposition of a similar planning condition.

6.14 The applicant has submitted an indicative seating plan which shows the seating to be clustered away from the eastern boundary. This is an attempt to reduce any potential impact upon the adjacent residential property to the east – the adjacent property to the west being offices. It is acknowledged that the increased number of potential users of the tea garden may increase its impact upon residential amenity. However the tea garden is modest in size and therefore self regulating in terms of the number of people it can accommodate. In addition the hours of the tea garden are limited to the existing opening hours of the premises. This means that no user would be in the garden after 17.30 on a weekday or 17.00 on a weekend. The tea garden will not therefore be used during unsociable hours and is therefore unlikely to have such an impact upon adjacent residential amenity which would warrant a refusal of this application. Nevertheless a temporary permission should be granted in the first instance to enable the effects of the intensification of use to be assessed. This can be ensured by planning condition.

Conclusions

- 6.15 The report acknowledges the concerns of the nearby residents and appreciates that the increase in opening hours and increased seating in the tea garden has the potential to impact upon levels of residential amenity. However the increase in opening hours to allow for Saturday evening opening appears reasonable in this central village location and the level of potential increased disturbance to residents is not likely to be such as to warrant the refusal of the application. I feel that a one year test period is also appropriate for this proposal.
- 6.16 The application does not involve any physical works to the building and involves the siting of moveable tables and chairs only. The application will therefore have no permanent impact upon the wider CA or the setting of the adjacent Listed Building. It is noted that the potential increase in people and vehicle movements will impact upon the wider CA but this impact must be balanced with the overall function of the settlement.
- 6.17 The business provides a social and cultural opportunity which adds to the overall vibrancy and economic vitality of Aylesford village. This means an appropriate balance must be maintained between the needs of the proprietors to run a viable business and the need to maintain acceptable levels of residential amenity. The potential for increased impact upon adjacent residential amenity is acknowledged; however the proposed increase in opening hours and additional seating provision is modest and reasonable. The playing of amplified live music within the building can be limited by planning condition as can the use of the tea garden in the evening. The application is therefore acceptable, accords with the adopted Development Plan and I recommend it be approved subject to planning conditions.

7. Recommendation:

- 7.1 **Grant Planning Permission** in accordance with the following submitted details: Location Plan K410247 dated 28.09.2010, Email dated 14.01.2011, Plan dated 19.01.2011, subject to:

Conditions / Reasons

1. The extended Saturday opening hours hereby permitted shall be limited to a period of one year from the date of this permission.

Reason: In order that the full impact of the extended opening hours can be assessed in the interests of adjacent residential amenity.

2. The use of the additional seating in the tea garden hereby permitted shall be limited to a period of one year from the date of this permission. The applicant shall give notice in writing to the Local Planning Authority of the date of commencement of use of the additional seating.

Reason: In order to that the full impact of the additional seating can be assessed in the interests of adjacent residential amenity.

3. No amplified music or speech shall be played in the Tea Garden at any time.

Reason: In the interests of residential amenity.

4. There shall be no exterior lighting except in accordance with details that have been submitted to and approved, in advance of installation, by the Local Planning Authority.

Reason: In the interest of adjacent residential amenity.

5. The extended opening hours hereby permitted relate to the building only and do not permit the evening use of the tea garden.

Reason: In the interests of adjacent residential amenity.

6. The rear access door to the tea garden shall be kept closed between the hours of 17.00 to 09.00 save for emergency use.

Reason: In the interests of adjacent residential amenity.

Contact: Maria Brown