

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**AREA 3 PLANNING COMMITTEE**

**02 June 2011**

**Report of the Chief Solicitor**

**Part 1- Public**

**Matters for Information**

**1 PLANNING APPEAL DECISIONS**

Site **Holborough Service Station, Holborough Road, Snodland**  
Appeal **Against the refusal to grant express consent for 1 no.  
internally illuminated pole mounted display unit**

Appellant **Primesight Ltd**  
Decision **Appeal dismissed**

Background papers file: PA/01/11

Contact: Cliff Cochrane  
01732 876038

The Inspector considered the main issue in this case is to be the effect of the proposal on the character and appearance of the surrounding area.

**Reasons**

The Council has referred to Policy CP24 of the Tonbridge and Malling Borough Core Strategy (2007), which states that all development must be well designed and respect the site and its surroundings. The Regulations require that decisions be made only in the interests of amenity and public safety. Therefore the Council's policies alone cannot be decisive. However the Inspector took them into account as a material consideration in the determination of this appeal.

The Holborough Service Station includes a disused petrol filling station with a prominent canopy over, a single storey building used as a fast-food outlet and extensive areas of hardstanding, all of which are set back from the road. Amongst other signage within the site there is a large double-sided totem sign situated in a prominent position close to the road.

The proposal would comprise a double-sided display unit measuring about 1.3m wide by 1.9 high mounted on a 2.3m high pole which would be internally illuminated. The appellant has advised that the advertisements to be displayed will not always directly relate to goods and services available at the premises.

The structure would have an overall height of approximately 4.2m and would be sited in a prominent position close to the totem sign and the road. Although the appeal site is close to a busy main road and residential and commercial properties, its immediate surroundings also include grass verges and vegetation which give the area a relatively open character and reasonably uncluttered appearance. In the Inspector's judgement, due to its size and siting, the proposal would lead to an unacceptable proliferation of signage and visual clutter in a prominent location which would have a harmful effect on the character and appearance of the surrounding area.

For the reasons set out above, and having regard to all other matters raised, the Inspector concluded that the appeal should fail.

Site: **43 Malling Road, Snodland**  
 Appeal **Against the refusal of permission for a single lock-up shop  
 (Class A5 hot food take-away)**

Appellant **Mr Ali Langroudi**

Decision **Appeal allowed**

Background Papers file : PA/06/11

Contact: Cliff Cochrane  
 01732 876038

The Inspector considered the main issue in this case to be the effect of the proposal on the Living conditions of neighbouring residents with regard to noise and other disturbance likely to be generated by the proposed use.

### **Reasons**

The appeal site, currently used for informal parking, is located to the rear of No 43 Malling Road with its frontage and access to Rocfort Road. It is proposed to erect a single-storey building comprising a hot food take-away, storage and garage. Parking for three vehicles would be provided in the area to the west of the proposed building. The indicated opening hours are 18.00 – 22.00 every day of the week.

The Council has accepted the principle of developing the site for Class A1 retail purposes, having approved an application for a single-storey lock-up shop in 2007, although this is subject to a condition preventing evening opening. The current proposal would be to the same design and occupy the same position and footprint as the approved building.

Subsequently, the Council has refused two earlier applications for a hot food take-away for reasons of amenity and traffic generation reasons. In an attempt to overcome the Council's concerns, the appellant supplied an Environmental Noise Impact Assessment (ENIA) which includes measurements of ambient noise recorded during the proposed opening hours.

The ENIA indicates that noise generated by customers and delivery vehicles would be unlikely to exceed the recommended guidelines for external and internal noise levels within neighbouring properties, provided a robust acoustic fence is erected along the northern and western boundaries. In response, the Council's Environmental Health Officer considers the previously identified concerns about possible noise disturbance appear to have been satisfactorily addressed. Based on the Inspector's own observations, he found no reason to disagree with that professional assessment.

The Inspector accepted that noise and other disturbance generated by visitors to a take-away is of a different nature to that from a retail unit, as they generally attract a higher turnover of customers and have later opening hours. Customers may also remain in the vicinity of the premises once food has been collected, thus potentially causing further disturbance. However, there is a balance to be struck between what is reasonable and what is excessive. Malling Road and Rocfort Road contain several business premises including a commercial garage directly opposite the site. A well-used public car is nearby. The locality clearly has a mixed residential and commercial character, and serves as a focus for local shopping and other business activity. In the Inspector's experience, residents living in such areas normally expect to tolerate much higher levels of noise and disturbance arising from such activities than those living in wholly residential areas, and this factor influenced his reasoning.

The Council says the evening opening hours would create additional and unacceptable noise and disturbance. However, unlike many similar outlets of this type, the proposed 22.00 closing time is relatively early. As such, the premises would not tend to attract trade from public houses after they close later in the evening, this potentially being the chief source of noise, anti-social activity, and general disturbance to residential amenity.

Therefore, subject to appropriate safeguards, the Inspector saw no reason why the activities of customers visiting the take-away would result in unacceptable levels of noise and other disturbance to nearby residents, particularly as traffic and pedestrian movements would mainly be concentrated at the front of the premises on Rocfort Road. The proposed acoustic fence would also mitigate the effects of noise generated by the comings and goings of vehicles in the car park area.

In addition to noise disturbance issues, local residents have raised concerns regarding parking pressures, traffic congestion, potential for rubbish and litter, and cooking smells. Others say there is no need for another take-away outlet in the area. However the Council has not raised any highway/parking objections and the Highway Authority is now satisfied with the revised scheme. The proposed extraction flue, to current technical specifications, would be located on the elevation of the building facing the public car park, well away from the nearest dwellings. Nor did the Inspector have any substantive evidence to persuade him that litter would be a significant problem.

Taken together, these all demonstrate a considerable level of local feeling. Nonetheless, whilst the Inspector noted these and other concerns, none is sufficient to alter the considerations that have led to his conclusion that the proposal would not materially harm the living conditions of nearby residents. As such, he found no conflict with Policy CP24 of the adopted *Tonbridge and Malling Core Strategy*, which requires development to respect the site and surroundings and make a positive contribution to the appearance and safety of the area.

The Inspector imposed a number of conditions, one of which restricted the opening hours from 18.00- 22.00 on any day.

**Adrian Stanfield**

Chief Solicitor

<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	Information report
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	Information report
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

*In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.*