

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

10 August 2005

Report of the Director of Planning & Transportation

Part 1- Public

Matters For Decision

1 PLANNING APPLICATION TM/05/608 - 5 PREMIER PARADE, AYLESFORD

Summary

Planning permission is sought for the change of use of 5 Premier Parade from Use Class A1 (retail) to Use Class A5 (sale of hot food). The application was reported to the Area 3 Planning Committee on 26 May and 23 June (on the latter occasion accompanied by a Part 2 report from the Chief Solicitor). Members of Area 3 Planning Committee resolved not to accept the recommendation that planning permission be granted and, in accordance with the Constitution, this application is being reported to Council for a decision.

1.1 Introduction

1.1.1 The reports to APC3 on 26 May and 23 June (and the Supplementary Report of 23 June) are attached.

1.1.2 APC3 received a Part 2 report from the Chief Solicitor. A further Part 2 report is attached to these papers, setting out the Chief Solicitor's latest advice in the light of advice he has received from Counsel.

1.2 Additional Representations

1.2.1 Since the application was last considered by APC3, one further letter with enclosures has been submitted on behalf of local residents, setting out their concerns at length and in some detail. A further letter, similar in tone, has been sent to the Chief Executive with regard to the way in which this case has been handled. Apart from questioning the advice given to Members by Officers, the material planning issues raised may be summarised as follows:

- shortfall of parking spaces relative to KCC standards
- increased traffic generation
- proliferation of takeaways, reducing the diversity of types of business in the Parade

- harmful effects on the environment; strength of local opinion
- incidence of anti-social behaviour in the locality, as evidenced by the need to install security cameras
- harm to the daytime economy, resulting in the area becoming run-down
- residents' concerns are supported in Government advice regarding the introduction of A5 Uses.

The submission is accompanied by a number of supporting documents, all of which are available for Members' information.

1.3 Further Consideration of the issues raised

1.3.1 Parking – the following are the views of the KCC Highways Engineer:-

The site is an historical site and the required parking would have been assessed based on the current standards, if there were any, at the time of construction. It is necessary to focus on the comparison of parking between the existing and proposed uses.

The Kent County Council Vehicle Parking Standards indicates that for the proposed Class A5 takeaway there is a requirement for six spaces per unit. For an A1 retail unit the requirement is based on one car space per 18 square metres of floor area. The stated floor area is 95.37 square metres. This equates to 5.3, say 5 spaces. With such a close theoretical comparison I am of the opinion that there is unlikely to be a demonstrable detriment to the existing parking regime with the proposed change of use.

1.3.2 With regard to the possible provision of parking spaces at the rear of the property, it is noted that there is an enclosed yard area with inward opening metal gates having access on to an unadopted service road. The width of the entrance to the site between the gateposts is approximately 3.7m. The area available for parking measures approximately 4.8m in width by 5.8m in length and would be capable of accommodating two vehicles with adequate clearance of the rear gates and the rear door of number 5. There would also be some space remaining for refuse storage facilities.

1.3.3 It is suggested that the rear yard area could be made available for parking for those staff involved in the food preparation and cooking processes. This matter could be covered by an appropriate condition. It is not thought that this area would be suitable for the comings and goings of any vehicles associated with delivering take-away orders, or for customers' parking.

1.3.4 In the light of residents' continuing concerns over the level of parking, periodic inspections of the locality have been undertaken, including at evenings and weekends. Parking spaces in the vicinity of the shops were found to be in use

and although the area was busy at peak times, parking spaces were always available.

1.3.5 Increased Traffic Volumes – The following are the views of the KCC Highways Engineer:-

Without the need for a planning approval the unit could become a video rental outlet or an off licence. In my opinion the operation of these types of use could be very similar to that of a takeaway and generate similar levels and patterns of traffic.

1.3.6 Proliferation of Takeaways - The site is identified, as forming part of an urban local centre where retail uses will be permitted under policy P5/23. The use of units in Premier Parade for takeaway purposes represents an appropriate use in an urban local centre, as such a use serves a local need. Policy P5/23 does not indicate a level at which the number of takeaways as a percentage of the total number of units becomes unacceptable. It is not the purpose of the Planning system to seek to interfere with competition between different types of use.

1.3.7 The wording of policy P5/23 does not include reference to the need to maintain a range of uses in urban local centres. Policies to control the level of non-retail frontage in a particular shopping area are sometimes used, particularly in town centre locations, but there is no such policy that applies here.

1.3.8 Members also have the advice of the Chief Solicitor in Part 2 to consider. From that you will see that you must be satisfied that there is the evidence to support any reason for refusal and that Counsel has specifically advised that the guidance in the circular which accompanied the new use classes order relates to balancing the A3-5 uses and not to the question of balance between A5 and all other uses.

1.3.9 The comments made about covenants on The Parade are noted but this is a private matter and not one covered by planning legislation.

1.3.10 Level of Neighbour Representations - The number of representations received from local residents has always been acknowledged in the reports to committee. It is clear that there is a high level of concern about the proposed development. Planning Officers are required to base their recommendations on an impartial assessment and judgement of the material planning issues. At times the advice of planning officers will not accord with the sentiments of local opinion. In terms of the planning system local sentiment is not in itself a sufficient reason to recommend refusal of planning permission.

1.3.11 The concerns of neighbours have been given careful consideration. In order to provide a more detailed analysis, the site has been visited at various times of the day over a 10-day period so that parking, litter and the general nature of activity in the locality can be assessed. These investigations revealed that there were occasional pieces of rubbish around the area generally associated with the sweet shop in The Parade. Litterbins were in use and a serious litter problem was not

evident. On occasions small groups of children or young people were seen in the area of The Parade but in general the area was relatively quiet.

- 1.3.12 Anti-Social Behaviour - Reference has been made to anti-social behaviour problems in the area that residents believe are associated with The Parade. Neighbours are concerned that an extra takeaway will add to these problems. Further information has been requested from the Police Architectural Liaison Officer. Information provided by the PALO was based on an assessment of the likely impact of the opening of an off licence in Premier Parade. It revealed that during the first 6 months of this year

“there is a drinking culture within the vicinity of Premier Parade combined with vehicle nuisance in the form of motorbikes being driven without helmets and there is the concern that there is the potential for a serious incident.

Additionally criminal damage and violence against the person have traditionally been the crime types that are most likely to increase with alcohol consumption. As these are already the highest crime types in the area, one should be aware of the detrimental impact that any increase would have on the local community.

Furthermore the temporal analysis and the proximity of the local school evidences the qualitative data in identifying the vulnerability of young people in becoming involved in anti-social behaviour. So, any increased opportunities for obtaining alcohol, whether it be by shoplifting or by children being supplied by adults, needs to take account of this risk factor.”

1.4 Conclusions

- 1.4.1 Reference has been made to Government advice in PPG 6 (Planning for Town Centres) and Circular 03/2005 (Change of Use of Buildings and Land). PPS6 is concerned with positive planning for town centres and identifying and designating a network of shopping centres. It also seeks to promote a balance of uses in town centres and primary frontages through the development control process.
- 1.4.2 Circular 03/2005 reflects the recent changes to the UCO, particularly the creation of classes A3, A4 & A5. The amended UCO has been designed so that each of these classes accurately reflects the impact on the environment of a particular use. It is considered that effective control must be retained over changes of use that would have a material impact in land use planning terms on local amenity or the environment. The Circular recognises that uses for the retail of hot food and drinks can contribute to the vitality of a retail area. The new UCO is designed to secure a satisfactory balance between the numbers of “restaurants”, “bars” and “takeaways” to ensure that none of these uses predominates over the others to the detriment of local amenity or vitality of the area. Again, Members are reminded of the legal advice regarding the “balance” of uses, at paragraph 1.3.8 above. Applications will as usual need to be treated on their own merits with regard to any possible environmental impact.

1.4.3 Despite the high number of representations from local residents there has been no hard evidence submitted to support the claims. It does not appear from the evidence obtained through recent site inspections by Planning Services staff that the existing takeaways generate severe problems or that a third take-away would seriously alter the situation. Whilst groups of young people may be gathering in the locality and elements of unacceptable behaviour may occur, these do not appear to be directly attributable to the specific nature of the facilities available in the outlets in The Parade nor can they be directly linked to the existing takeaway establishments. Despite the perceptions of local residents, there is no real evidence that the existing takeaways actually give rise to problems of parking, noise or anti-social behaviour. In these circumstances it is difficult to mount a case that a third takeaway would lead to any unacceptable changes in this respect.

1.5 Recommendation

1.5.1 Grant Planning Permission subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of five years from the date of this permission. (Z001)

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

2. The development hereby approved shall only operate between the hours of 10.00 and 22.30 Mondays –Saturdays and 17.00-21.30 on Sundays and shall not operate at any time on Public or Bank Holidays.

Reason: To protect the aural environment of nearby dwellings.

3. The use shall not commence until full details of a scheme of mechanical air extraction from the kitchen, including arrangements for the continuing maintenance of this equipment and any noise attenuation measures required in connection with the equipment, have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully installed before use of the kitchen commences and shall thereafter be maintained in strict accordance with the approved details. No cooking of food shall take place unless the approved extraction system is being operated. (N014)

Reason: In the interests of the amenities of nearby properties.

4. Noise emissions from the extraction system shall at no time exceed 35dB (A) at the façade.

Reason: To protect the amenities of the occupants of nearby dwellings.

5. The premises shall be used only for take-away purposes and for no other purpose (including any other purpose in Classes A3 or A5 of the Schedule to the Town and Country Planning (Use Classes) Order 2005, or in any provision

equivalent to that Class in any statutory instrument amending, revoking and re-enacting that Order).

Reason: In the interests of the residential amenities of the occupants of the area.

6. The use shall not commence until full details of grease traps for the sinks and drains for the kitchen, including arrangements for the continuing maintenance of this equipment, have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully installed before use of the kitchen commences and shall thereafter be maintained in strict accordance with the approved details. No cooking of food shall take place unless the approved extraction system is being operated.

Reason: In the interests of pollution control.

7. The use shall not be commenced until two car parking spaces for staff have been provided in the yard to the rear of the premises. Thereafter, these spaces shall be kept available for such use at all times.

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

Informatives

1. With reference to condition 3 above, reference should be made to the new Guidance-Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems (2005).

2. It is suggested that appropriate refuse bins are sited adjacent to the shop unit with a sign placed inside the premises advising customers to make use of them.

Background papers:

contact: Neil Hewett

Nil

Steve Humphrey
Director of Planning & Transportation