

**Aylesford**  
Aylesford

**15 June 2016**

**TM/15/01239/FL**

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Proposal: Installation of mobile fish van in car park (retrospective).  
Section 73 application for the removal of condition 1  
(Temporary use) of planning permission TM/13/03491/FL  
(installation of a mobile fish van in car park (retrospective) to  
enable the permanent retention of the fish van

Location: Holtwood Farm Shop 365 London Road Aylesford Kent ME20  
7QA

Applicant: Chummys Ltd

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**1. Description:**

1.1 This application seeks to formally remove Condition 1 of planning permission TM/13/03491/FL to enable the mobile fish van to be retained at the Holtwood Farm Shop on a permanent basis. For the avoidance of doubt, Condition 1 reads as follows:

*“The mobile fish van hereby permitted shall be removed and the use hereby permitted shall be discontinued and the land restored to its former condition on or before 1st May 2015.*

*Reason: To enable the Local Planning Authority to regulate, monitor and control of the site/building.”*

1.2 The period for compliance with the above condition has lapsed but there is provision to consider the removal of the condition on a retrospective basis.

1.3 The application does not seek the removal or variation of any of the other conditions imposed by planning permission TM/13/03491/FL.

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

2.1 High level of public objection.

**3. The Site:**

3.1 The application site is situated on the front forecourt and within the parking area of a well-established farm shop. The farm shop site is populated by a modern shop building which sits roughly central on the plot, a rear external sales area to the south east and a parking area to the front (north west) with 19 car parking spaces. The site is accessed from the A20 to the north by way of an in-out road system. The immediate locality is primarily residential; however, Aylesford Retail Park is situated approximately 100 metres to the east. The local landscape is of no special designations.

#### **4. Planning History (relevant):**

TM/13/03491/FL      Approved                              2 June 2014

Installation of a mobile fish van in car park (retrospective)

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Installation of mobile fish van in car park (retrospective). Section 73 application for the removal of condition 1 (Temporary use) of planning permission TM/13/03491/FL (installation of a mobile fish van in car park (retrospective) to enable the permanent retention of the fish van

#### **5. Consultees:**

5.1 PC: Strong objection. We are still aware of residents' complaints about smell and noise.

5.2 KCC (H+T): No objection

5.3 Private Reps: 43/2X/9R/S. Objections raised on the following grounds:

- Parking in close proximity to neighbouring dwellings;
- Not clear whether cooking of food will resume;
- Inappropriate location;
- Inadequate parking causing highway safety concerns;
- Noise and disturbance;
- Should not be allowed to extend opening hours or to provide seating for customers;
- Fish van should not be moved to an alternative location within the site;
- Concern that applicant has not abided by conditions;

#### **6. Determining Issues:**

6.1 Condition 1 was imposed on planning permission TM/13/03491/FL to enable the LPA to give the development a "trial run" in order to assess its effect on the locality and to establish whether or not the other restrictive conditions concerning how the use were to operate were sufficient to mitigate the harm identified by local residents in the preceding period whilst the use had been unauthorised.

- 6.2 The NPPG states that it will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so. In considering this application, it is therefore necessary to establish whether the effect of the development has been so harmful to justify the refusal of a permanent permission or whether the conditions previously imposed afford a sufficient level of control to render the development acceptable in planning terms.
- 6.3 An odour complaint was received prior to the grant of the temporary permission but no Statutory Nuisance was established following the cessation of cooking at the site. Since the temporary planning permission was granted in June 2014, I can advise that the Council has only received one Environmental Health complaint about the fish van. This complaint was regarding noise, specifically raised voices from staff and customers. Environmental Health investigated the matter but investigations concluded that there was not a Statutory Nuisance occurring.
- 6.4 Following the grant of temporary planning permission, a complaint to the Planning Enforcement Team was made concerning the hours of operation of the use. Investigations at that time concluded that whilst staff members were present before the permitted opening hours, there was no evidence that customers were served outside the approved hours and therefore there was no breach of the condition occurring.
- 6.5 Subsequently, there have been no further formal complaints concerning the operation of the site outside the terms of the temporary planning permission and no complaints have been logged with the Environmental Protection Team concerning odour or noise disturbance.
- 6.6 I appreciate that some residents continue to object to the presence of the fish van, primarily on grounds of noise and parking. However, given that it has now been operating for some time, with no complaints having been raised to the Council, it would not be reasonable to withhold a permanent permission on such grounds now. The conditions imposed on the temporary planning permission are providing a suitable level of control in the interests of amenity.
- 6.7 Furthermore it should be noted that there have been no objections raised on grounds of highway safety by KCC. Indeed, some of the representations received seem to indicate that visitors to the farm shop also visit the fish van and therefore shared trips are occurring.
- 6.8 In light of these considerations, I conclude that a permanent planning permission can now be granted, subject to the imposition of conditions concerning specific operations along with a further condition expressly preventing any outdoor seating for customers. The following recommendation is therefore put forward:

**7. Recommendation:**

**7.1 Grant planning permission** subject to the following conditions:

**Conditions:**

- 1 The premises shall not be open to the public other than between the hours of Friday to Sunday 10:30 to 18:30.

Reason: To protect the residential amenity of the locality.

- 2 The premises shall be used for a A1 (retail) use and for no other purpose whether or not permitted by Part 3 of Schedule 2 to the General Permitted Development Order 1995 or any provision equivalent to that Part in any statutory instrument amending, revoking and re-enacting that Order.

Reason: In order to enable the Local Planning Authority to regulate and control further development within this site in the interests of the environment.

- 3 No cooking of fish or other food shall occur within the site.

Reason: In the interests of the residential amenities of the neighbouring residential dwellings.

- 4 No external seating shall be provided within the site.

Reason: In the interests of the residential amenities of the neighbouring residential dwellings.

Contact: Emma Keefe