

**Borough Green**  
Borough Green And  
Long Mill

**28 September 2016**

**TM/16/02936/FL**

Proposal: Change of use from Class A1 (shop) to Class A5 (hot food takeaway) and external alterations - including the installation of extraction and ventilation equipment  
Location: 68 Western Road Borough Green Sevenoaks Kent TN15 8AH  
Applicant: Emruliah Kaya  
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**1. Description:**

- 1.1 This application seeks planning permission for the change of use of the ground floor from Class A1 (Shop) to Class A5 (Hot Food Takeaway). The upper floors will remain in separate residential use.
- 1.2 External alterations are also proposed to the rear of the building to facilitate the use. These include the installation of a 500mm dia. oven extract duct with ON100 odour neutralising system, 400mm dia. fresh air intake and cold room compressor. A doorway to the rear elevation of the building is to be bricked up and finished to match the external appearance of the building.

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

- 2.1 Significant local interest

**3. The Site:**

- 3.1 The application site is a shop located in the middle of a terrace of commercial premises to the north of Western Road. The parade consists of 5 units containing a butchers, flooring shop, kebab/pizza takeaway and a skin care/beauty clinic. The current use of the application premises is as an off-licence/convenience shop and falls within an A1 use class. Since the parade was granted permission in the 1960's each of the premises have sought permission for flat roof single storey rear extensions with the application site being permitted to do so in 1988.
- 3.2 In 1993 permission was granted for the rear extension of the adjacent premises to become part of 68 Western Road creating a larger rear area forming the 'L' shape of the ground floor as the application site is to date. To the rear of the site is a communal parking area and associated garages for use by the 5 commercial premises (64 – 72 Western Road) and the 5 residential flats above.

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

TM/63/10508/OLD    grant with conditions    19 December 1963

Outline application for five shops with living accommodation over, as amplified by you plan and letter dated 12th November, for F. H. Haines.

TM/64/10628/OLD grant with conditions 21 October 1964

5 shops with flats over and garages with access road and waiting bay, for Messrs. All Holding Investments Ltd.

TM/65/10671/OLD grant with conditions 1 April 1965

Change of use from residential to office use, (as amended by drawing No. 116/7A).

TM/87/11005/FUL grant with conditions 30 April 1987

Prefabricated store in yard to rear.

TM/88/11152/FUL grant with conditions 4 October 1988

Single storey rear extension.

TM/93/00196/FL grant with conditions 29 June 1993

Rear store to No. 66 for use with No. 68 and revised access

TM/93/00197/AT grant with conditions 2 August 1993

Fascia sign

TM/93/00198/FL grant with conditions 9 July 1993

Replacement shop front

TM/11/00320/AT Split Decision 7 June 2011

Retention of (A) internally illuminated fascia sign, and (B) internally illuminated projecting sign

TM/11/00517/FL Refuse 7 June 2011

Retain folding canopy and security shuttering

**5. Consultees:**

5.1 Borough Green PC: No objection in principle however suggested conditions relating to ventilation/odour system and litter collection.

5.2 KCC (Highways): Whilst residents concern is noted and there may be some local inconvenience regarding highways matters, in context of the NPPF guidelines I do not consider this proposal constitutes a severe impact and therefore have no grounds for a sustainable objection.

5.3 Private Reps + Site Notice :(15/0X/34R/1S)

5.3.1 Thirty-four objections have been received as follows:

- Don't need another takeaway
- No benefit to village
- Traffic (noise/level/pollution)
- Noise
- Litter
- Loss of retail unit

5.3.2 One comment in support stating:

- Less traffic than current use due to deliveries

**6. Determining Issues:**

6.1 Paragraph 17 of the NPPF states that the overarching roles of the planning system are to proactively drive and support sustainable economic development to deliver homes, businesses and industrial units and to promote mixed use developments. Paragraph 19 advises that the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth; and that planning should operate to encourage and not act as an impediment to sustainable growth. It directs that significant weight should be placed on the need to support economic growth through the planning system.

6.2 The application site is within the rural settlement confines of Borough Green where Policy CP12 applies. Policy CP12 outlines that housing and employment development, redevelopment, conversions and changes of use will be permitted within the confines of rural settlements. The proposal is for change of use of the land to Class A5 and would therefore be in accordance with Policy CP12.

- 6.3 The application sites lies 100m west of the edge of the area defined as the Borough Green Retail Centre. As the site is not located within the defined retail centre the stated requirements set out in Policy R1 of the DLADPD do not apply. The application site is however within a short distance of the retail centre and, given its proximity, is likely to have an associated impact. For that reason the proposal must be assessed against Policy CP22.
- 6.4 Policy CP22 of the TMBCS states that (inter alia) proposals which might harm the vitality or viability of an existing centre either in terms of retail impact or, in the case of smaller centres, undermining the balance of uses or harming their amenity will not be permitted. The proposal is for the change of use of a single unit. Although with the larger rear addition permitted in 1993 it would be one of the larger units within the parade on Western Road it would, in my view, represent a relatively small scale business when compared to the numerous and larger scale A1 and A5 uses within and around the defined Borough Green Retail Centre. Whilst it is acknowledged that the proposed A5 unit will compete with those businesses within the retail centre, due to its relatively small scale it cannot be said to result in a significant harm to the vitality or viability, or undermine the balance of uses within the retail centre. For that reason I consider the proposal would not be contrary to Policy CP22.
- 6.5 Turning to the impact of the proposal on the highway network in terms of the potential additional traffic generated and the associated noise/pollution this additional traffic could result in, KCC (H+T) has been consulted on the application and has raised no objection on highways grounds. They have stated that, whilst there may be some "local inconvenience" regarding highways matters, in the context of NPPF guidelines it is not considered that the proposal would constitute a severe impact.
- 6.6 This reference is made in respect of the relevant guidance at Paragraph 32 of the NPPF, this states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. Policy SQ8 of the MDEDPD is also relevant and states that development will only be permitted where it does not significantly harm highway safety and where the traffic generated can be adequately served by the highway network.
- 6.7 When assessing the impacts of the proposed change of use on the highway network I am minded to consider that the unit is currently used as a shop. Although the change to a A5 takeaway use may generate some additional traffic from further afield than the current permitted use it would not, in my view, result in a significant increase in traffic to have a severe/significant impact on the highway network or its safety, as set out in paragraph 32 of the NPPF and Policy SQ8 of the MDEDPD. KCC (H+T) consultation response reaches the same view.
- 6.8 With regards to the vehicular parking, the relevant parking standards for commercial properties are set out within KCCVPS (SPG4). SPG4 requires that a

unit within an A5 use class has one customer space per 8m<sup>2</sup> requiring a total of 11 spaces for the 83.3m<sup>2</sup> unit. The current premises does not have any off street parking for the A1 retail unit. Although not providing customer parking the site is well served by public transport and a public car park is located a short distance from the application site, in addition to limited on street parking. I therefore cannot say that the shortfall in parking below the proposed standard would result in a severe impact on highway safety to be contrary to paragraph 32 of the NPPF and Policy SQ8 of the MDEDPD.

- 6.9 To facilitate the change of use from shop to takeaway the applicant proposes to install a ventilation system onto the flat roof addition of the unit and the rear wall of the flats above. This ventilation system includes a 500mm dia. oven extract duct which is to project vertically beyond the residential flats above and terminate 1m above the ridge line of the building. This ventilation system is to include an ON100 Odour neutralising system. In addition to this a 400mm dia. fresh air intake is to also be installed projecting 1m above the flat roof addition. The proposed extractor duct would be of a similar appearance to that installed to the rear of 66 Western Road. In terms of the impact that the ventilation system has on the visual amenity of the wider area I am minded to consider that it is to be installed to the rear elevation of the building that is not visible within the street scene. To the rear of the premises is the parking area with the railway line beyond. As a result of their position I do not consider the external alterations would result in harm to the visual amenity of the area.
- 6.10 To address the issues of noise and odour the applicant has submitted two reports, one setting out the details of the proposed ventilation system and the other being a Plant Noise Assessment. In terms of noise, the Plant Noise Assessment sets out within its results that to meet the limits set by the Borough Council (being a noise rating of 35 [NR35]) mitigation measures are required including an acoustic enclosure for the cold store condenser and silencers for the ducts. Based on the report it is able to be demonstrated that the proposed ventilation system is able to meet the required noise limits at the closest noise sensitive property which is the upper floor flats to the parade. The requirements to install this ventilation system and suggested noise mitigation measures can be secured by way of condition.
- 6.11 In order to retain control over noise from similar future uses I suggest that permitted development rights for a change of use to bar or restaurant be restricted by way of condition.
- 6.12 Annex C of the proposed ventilation report sets out an odour score based on the document 'Guidance on the control of odour and noise from Commercial Kitchen Exhaust Systems – January 2005' produced by DEFRA. The score for the proposed use is 24 which is within the 'high' odour category and requires high level odour control to be implemented. Concern was initially raised as the ventilation system proposed a basic filtration system that was not considered to be sufficient to deal with a high level of odour. Revised plans have been received

which propose an ON100 odour neutralising system within the ventilation system. It is considered that this would be sufficient to address the level of odour indicated and a condition will be imposed to require this to be installed as per the submission.

- 6.13 The hours of use have been set out on the application forms and are proposed to be 1000 to 2300 hours Monday to Sunday including bank holidays. The application site is a short distance from the centre of Borough Green and, although within a parade of 5 commercial units, is located within a predominately residential area with residential properties above. The adjacent A5 use in 66 Western Road had its opening hours restricted when permission was granted for a change of use to A5. A variation to this condition was then granted to allow 66 Western Road to open between 1200 and 2230 hours. With the site being in a predominately residential area and with a view to the impact the proposal may have on residential amenity I consider it reasonable that the hours of operation should be restricted to no later than 2230 hours in the evening. The hours of operation will be included by way of condition.
- 6.14 Some matters that have been raised through the private representations outline that they do not consider there is a need for another takeaway, that the proposed change of use will provide food that is already available, and will provide competition making it harder for existing takeaways within the area. These are not material planning considerations and therefore cannot be taken into account in the determination of this application. Whilst there is significant local concern with the proposed change of use, only material planning considerations can be taken into account.
- 6.15 In light of the above assessment, I conclude that the proposal is acceptable in light of the requirements of the NPPF and is in accordance with policies CP1 and CP12 of the TMBCS and accords with policies SQ1 and SQ8 of the MDEDPD. As such, the following recommendation is put forward:

## **7. Recommendation:**

- 7.1 **Grant Planning Permission** in accordance with the following details: Noise Assessment 16/0586/R1 dated 31.10.2016, Email dated 22.11.2016, Block Plan B9178-AEW-16099-XX-DR-0006 B dated 23.11.2016, Proposed Elevations B9178-AEW-16099-ZZ-DR-0004 A dated 23.11.2016, Existing Floor Plans B9178-AEW-16099-00-DR-0001 dated 28.09.2016, Existing Elevations B9178-AEW-16099-ZZ-DR-0002 dated 28.09.2016, Location Plan B9178-AEW-16099-XX-DR-0005-A dated 28.09.2016, Letter dated 28.09.2016, Report ventilation system dated 21.10.2016, Report ventilation system dated 29.11.2016, Proposed Floor Plans B9178-AEW-16099-00-DR-0003 C dated 29.11.2016; subject to the following conditions.

## 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. Prior to the commencement of the use hereby approved the ventilation equipment and odour neutralising system as shown on drawing numbers B9178-AEW-16099-ZZ-DR-0004 received 23.11.16 & B9178-AEW-16099-00-DR-0003 received 29.11.16 and detailed in Proposed Ventilation system dated 29.11.16, Annex C dated 21.10.16 and Plant Noise Assessment dated 31.10.16 shall be installed. The ventilation equipment and odour neutralising system should be retained and maintained in perpetuity.

Reason: To protect the residential amenity of the locality.

3. The use hereby approved shall only operate between 1000 and 2230 hours Monday to Sunday.

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

4. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) or any order amending, revoking and re-enacting that Order, the use shall remain as an A5 (Hot Food Takeaway) unless otherwise agreed in writing by the Local Planning Authority.

Reason: To control the nature of the use in the interest of residential amenity.

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