

West Malling
West Malling And
Leybourne

12 September 2016

TM/16/02592/FL

Proposal: Change of use of ground floor residential unit to Class A4 (Drinking Establishment) with associated external alterations to the building and installation of an Air Conditioning unit and condenser

Location: 52 High Street West Malling Kent

Applicant: Mr D Catterall

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1. Description:

- 1.1 The application proposes to change the use of the ground floor unit of the building of 52 High Street (which fronts King Street) from a residential unit to a Class A4 drinking establishment (pub), and carry out external alterations to the building. An Air Conditioning (A/C) unit and condenser are also proposed to be installed.
- 1.2 The layout of the pub is to comprise a public bar area, back bar, store rooms and refrigerated room within the main building, WC facilities within the former toilet/store in the northwest corner of the premises, an enclosed courtyard area (19.5m²) and an open courtyard area (27m²). A bin storage enclosure is to be provided within the open courtyard.
- 1.3 The alterations to the building are to include the following:
 - Pub entrance door and new separate door for first floor flat on south elevation.
 - Existing timber gates in west (King Street) elevation to be replaced with new insulated wall comprising a timber door for delivery access and windows.
 - New walls to enlarge the building into the existing internal garage/courtyard, which will be retained but made smaller.
 - Fire exit door within northern courtyard wall opening out onto an alleyway.
- 1.4 The proposed operating hours are 12:00 to 21:00 each day, including bank holidays; 12:00 to 01:00 Christmas Day and New Year's Eve. The outdoor courtyard area is to close at 20:00 daily.
- 1.5 An A/C unit and condenser are to be installed on a flat roof element within the premises.

- 1.6 It has been estimated that there will be 2-4 deliveries per week by van with the deliveries being undertaken within a reserved area in front of the existing gates on King Street.
- 1.7 A Design Access Statement, Environmental Noise Survey and Plant Noise Assessment Report and a copy of a community presentation have been submitted with the application.
- 1.8 Members may wish to note that an application has also been submitted for a Premises Licence under the Licensing Act 2003, which is currently pending. The details of the Licensing application reflect the details submitted with this planning application.
- 1.9 It is also noted that planning permission was granted for a change of use of the same ground floor unit to Class A1 (Shop) use in January 2016 under reference TM/15/03364/FL. However, this permission has not been implemented.

2. Reason for reporting to Committee:

- 2.1 The application has been called in to Committee by Councillor Luck due to potential impact on residential amenity in King Street.

3. The Site:

- 3.1 The application site is located on the east side of King Street in the centre of West Malling. Despite its address it has no frontage to the High Street proper. It comprises the ground floor unit and courtyard of a two storey building attached to the rear of 48 High Street (The Crop Shop Hairdressers) and 50 High Street (The Heart of Kent Hospice Charity Shop). It is also situated between 35 King Street (dwelling) to the north and 54 High Street (Viner & Sons Funeral Directors) to the south, both of which are separated from the application site by Public Right of Way (PROW) footpaths that create alleyways linking King Street with the High Street. The application unit was a former residential flat but has now been stripped out and is currently vacant. The unit above is in residential use (currently vacant) and is under the ownership of the applicant. There is one existing entrance door that provides access to both the ground and first floor units situated within the centre of the south elevation of the building within the alley. A vehicle access and timber gates with lattice screen are situated within the centre of the King Street elevation. This provides access to a car parking space and small courtyard within the site.
- 3.2 The site is within the settlement confines of West Malling, the West Malling Conservation Area (CA) and an Area of Archaeological Potential. The site is also within a designated Retail Policy Area (R1). The High Street is a Classified Road. Several 3-storey blocks of flats lie to the west with a row of terraced cottages to the northwest along the western side of King Street.

4. Planning History (relevant):

TM/15/03364/FL

Approved

5 January 2016

Change of use from residential to Retail shop (A1)

5. Consultees:

5.1 PC: Supportive of the application for the following reasons:

- The addition of a micro pub to the West Malling business community will have a positive impact on our High Street and bring a different type of business to our town.
- We have been very impressed by the consultation and engagement with local residents by the applicants. They have listened to and taken into account their comments in coming up with the final planning application.
- We did note that this property is located adjacent to a residential area in the heart of the West Malling Conservation Area. The planning application calls for 2 condensers to be installed. Due to concerns about excessive noise (King Street is already affected by the excessive noise from other businesses on the High Street), the applicant has confirmed verbally at our meeting tonight that the quietest ones on the market would be installed. This is to minimise any noise pollution to neighbouring residential and business properties. We would like you to ask the applicant to supply the details of the exact ones to be installed so we can be assured of their quietness.

5.2 KCC (Highways): I note from the Design and Access Statement that deliveries will be undertaken by van. It would be helpful if this could be a condition of any approval notice. I write to confirm however on behalf of this authority that I do not consider there to be sustainable grounds for this authority to consider a refusal and that I have no objection to the proposal.

5.3 KCC (PROW): Public Right of Way MR585 footpath runs along the northern boundary of the application site and will be slightly affected by the application. I would like to make it aware that no doors should open up onto the path as all doors alongside a public right of way must open internally. I appreciate that an exception can be made for the use of a fire door providing that the door is either alarmed or has some sort of breakaway glass to make it very clear it is only a fire door and not an exit onto the public right of way. Public Right of Way MR584 runs along the southern boundary of the application site and should not be affected. No objects or machinery should be placed on or at the entrance of either path that would restrict the use for a pedestrian.

5.4 Kent Police: No comment to make.

5.5 Private Reps: 22/1X/1R/20S + site notice + press notice (PROW/CA/LB). The concerns raised have been summarised below:

- There is a lack of parking facilities on the site.
- The use may result in parking in front of the funeral directors garage doors at 54 High Street obstructing access.
- The use would further increase noise and unsociable behaviour.

5.6 The supporting comments received have been summarised below:

- The proposal will help curb the trend of the loss of pubs from towns and villages.
- The proposal shows a responsible attitude to avoiding disturbance to neighbouring residents.
- The sale of locally brewed beer supports UK businesses.
- The proposal will result in benefits to the West Malling community and the local economy.
- The town has a strong presence of pubs and restaurants which the proposal will support.

6. Determining Issues:

6.1 The main issues are the principle of the use on retail vitality and viability, whether the proposed development would affect the appearance and character of the CA, highway safety or neighbouring residential amenity.

6.2 The site is within the settlement confines of West Malling where changes of use of premises are permitted in principle under Policy CP12 of the Tonbridge and Malling Borough Core Strategy (TMBCS).

Retail Policy:

6.3 The application site is within a designated Retail Centre. Policy R1 of the DLA DPD therefore applies, where West Malling is defined as a District Centre for the purposes of retail hierarchy within the Borough.

6.4 Policy CP22 of the TMBCS advises that new retail development will be permitted if it maintains or enhances the vitality and viability of the existing retail centres and respects the role of the retail hierarchy outlined in the policy. At the top of the hierarchy are sites located within the defined limits of the town, district and local centres.

- 6.5 The application site is within the centre of West Malling, which is a district centre. Pubs/drinking establishments are considered appropriate in West Malling based on being an area suitable for typical town centre uses. The proposed use replaces a residential dwelling and therefore there is no impact overall on vitality and viability. The proposal would therefore accord with Policies CP12 and CP22 of the TMBCS and Policy R1 of the DLA DPD.

Appearance and Character:

- 6.6 Policy CP24 of the TMBCS requires development to be of a high quality and be well designed to respect the site and its surroundings in terms of its scale, layout, siting, character and appearance. Policy SQ1 of the MDE DPD advises that new development should protect, conserve and, where possible, enhance the character and local distinctiveness of the area.
- 6.7 Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 require planning authorities to give special attention to the desirability of preserving the setting of a listed building or any features of special architectural or historic interest which it possesses and preserving or enhancing the character or appearance of the CA.
- 6.8 The timber gates/doors and lattice within the centre of the King Street elevation are to be removed and replaced with a new rendered wall with traditional timber door, sash windows and fascia to enclose this section of the building. This would not visually harm the building and would also be sympathetic to the character of the CA and the building's setting with the surrounding listed buildings.
- 6.9 A new door will be installed within the southern side elevation to replace the existing window opening. This will be used for a separate entrance for the upstairs flat. The existing door will be replaced by a new entrance door for the pub. These works are located in the centre of the alley and would have a minimal effect on the appearance of the building.
- 6.10 A sign with external illumination has been indicated on the plans but this does not form part of the application. Express advertisement consent would need to be obtained for any pub signage proposed.
- 6.11 I am therefore satisfied that the proposed external changes to the building would not harm the appearance or character of the CA and would preserve the setting of the adjacent listed buildings. The proposal therefore satisfies Policies CP24 of the TMBCS and SQ1 of the MDE DPD, and would accord with Section 7 (Requiring good design) and paragraphs 129 and 131 (Heritage Assets) of the NPPF.

Highways:

- 6.12 The premises are in the centre of the West Malling where parking is provided within formal public car parks. The premises are relatively small and in any event I

would not expect that the proposed use would result in any noticeable cumulative increase in vehicular traffic or parking pressure in the village.

- 6.13 Deliveries are stated to be undertaken by van 2-4 times a week which would not be substantial. There is an existing access/forecourt area immediately in front of the premises within King Street which has been used to access the covered courtyard area within the site. This is sufficient to allow a van to park without obstructing traffic flow along King Street. KCC (H+T) has no objection to the development but has suggested that a condition be imposed on any permission granted requiring deliveries to and from the site to be made by van. However, this is not considered to be reasonably enforceable as it would be requiring the applicant to ensure something which is likely to be outside of their control. In any event, the nature of the site and surrounding streets are such that it would not be practical or desirable for deliveries to be made in larger vehicles meaning that effectively the matter is self-regulating.
- 6.14 PROW footpaths (alleyways) extend past the southern and northern elevations of the premises. KCC PROW has no objection to the development but has advised that no doors should open out onto the public footpaths. An exception can be made for the fire door proposed, as long as it is either alarmed or is made of breakaway glass so that it is clear that it is not to be used by the public to enter or exit the premises. It has been added also that no objects or machinery should be placed on or at the entrance of either path that would restrict the use for a pedestrian. Conditions can be added to any permission granted addressing these concerns.
- 6.15 I am therefore satisfied that the development would not result in any significant harm to highway safety and that any residual cumulative impacts on the transport network would not be severe. The proposal therefore accords with Policy SQ8 of the MDE DPD and paragraph 32 of the NPPF.

Neighbouring Amenity:

- 6.16 The application premises are situated adjacent to several blocks of flats and a number of dwellings that are located on the western side of King Street, as well as adjacent to the dwelling of 35 King Street to the north, on the opposite side of the public footpath/alley. An existing flat is also situated on the first floor directly above the proposed pub. The new pub use therefore has the potential to impact on neighbouring residential amenity in respect to noise, nuisance, smells and odours.
- 6.17 The central façade of the building facing King Street is to be enclosed with a new insulated stud wall with a delivery door. This will assist in insulating noise from the use and in particular activities within the proposed open courtyard/beer garden within the centre of the site.

- 6.18 The pub opening hours are proposed to be 12:00 to 21:00 each day. The outside courtyard is proposed to be closed at 20:00. The entrance door to the pub will be within the southern alleyway adjacent to the mostly blank walls of the funeral directors office and garage/store. This would minimise impact from patrons entering and leaving the premises. Some level of noise impact would be experienced by neighbouring residents, in particular the future occupants of the above flat and those occupying the dwelling at 35 King Street to the north which is situated adjacent to the outside courtyard/beer garden. However, I am of the view that the hours proposed would not be unacceptable given the central village location where a certainly level of noise at these times is expected.
- 6.19 Extended opening hours are proposed for Christmas Day and New Year's Eve until 1am the next morning. I consider this to be acceptable as once-a-year exceptions.
- 6.20 A noise assessment report has been submitted that comprises a 24 hour daytime and night-time noise survey to establish the prevailing environmental noise climate around the site. It was determined that the main source of noise would be plant noise from the proposed A/C unit and condenser. It was concluded that with the installation of specified attenuation in the form of a proprietary acoustic enclosure to reduce the atmospheric noise emissions by about 20dBA, that noise levels from the use on the nearest noise sensitive window (first floor flat) would satisfy the relevant British Standards. I consider that subject to a condition requiring the proposed attenuation to be submitted for approval that noise impact from the proposed plant equipment would not harm the living conditions of neighbouring residential occupiers.
- 6.21 A condition can also be imposed restricting the time when refuse is emptied into bins to minimise noise impact on neighbours. Conditions restricting times for deliveries to the premises can also be imposed.
- 6.22 Bars and pubs have the potential to generate anti-social behaviour and associated nuisance. However, I am satisfied that the restricted opening hours proposed for the new pub would assist in minimising such incidents. Also, the main pub entrance is located within the alley on the southern side of the building which would provide more focused access directly in from and out to the High Street, and therefore away from King Street. To prevent the use of the doors within the west (King Street) and north (footpath/alley) for normal public access to the pub, a condition can be imposed. This would help minimise the likelihood of patrons congregating around King Street or alley near 35 King Street.
- 6.23 It is noted that there is no designated smoking area and the beer garden is substantially enclosed by walls and therefore is unlikely to comply with the Smoke-free (Premises and Enforcement) Regulations 2006. Therefore patrons would need to leave the site to smoke which could lead to nuisance and obstruction of the southern alleyway. However, patrons could be directed towards the High

Street to smoke where the alley widens. Notwithstanding this, it is important to recognise that legislation beyond the planning system governs such matters and it would not be possible to seek to control such activity by planning condition particularly given that the activity in question would be taking place beyond the extent of the site boundary. Instead, it would be for the management of the premises to take steps to ensure the legislation was complied with appropriately and make all reasonable steps to ensure patrons behaved in a neighbourly manner.

- 6.24 The application details do not specify whether the proposed pub will include food preparation. However, such provision of facilities for the cooking of food as part of this use would be acceptable. As such, a condition can be added in respect to any ventilation/extraction system required in the future to safeguard any future impact from noise, smell and odour from cooking of food associated with the use.
- 6.25 I am therefore of the view that with the imposition of the conditions advised above, that the use can be operated such that impacts on neighbouring residential amenities would not be demonstrably harmful.

Representations:

- 6.26 I note the concerns raised by several representors relating to parking, vehicle access for adjacent properties and nuisance and anti-social behaviour. The premises is in the centre of the West Malling where public parking is available and sufficient space for a delivery van is provided in front of the premises which should not affect neighbouring vehicle access. The relatively modest opening hours proposed should minimise incidence of nuisance and anti-social behaviour from the proposed use.
- 6.27 In light of the above, I consider that the proposal accords with the relevant provisions of the Development Plan and NPPF, and therefore approval is recommended.

7. Recommendation:

- 7.1 **Grant Planning Permission** in accordance with the following submitted details: Email NOISE ASSESSMENT INFORMATION dated 10.01.2017, Noise Assessment 23835/PNA1 Rev2 dated 13.12.2016, Email dated 17.10.2016, Proposed Floor Plans 549.03.01 E dated 17.10.2016, Proposed Elevations 549.01.02 B dated 17.10.2016, Existing Floor Plans 549.02.01 + Location Plan dated 12.09.2016, Existing Elevations 549.01.01 A dated 12.09.2016, Design and Access Statement Revision A dated 12.09.2016, 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 All materials used externally shall accord with the plans and application details hereby approved and the fire door within the north elevation shall be of timber to match the other doors, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality.

- 3 The use hereby approved shall not be in operation outside the hours of 12:00 to 21:00 on any given day, other than Christmas Day and New Year's Eve where the use shall not be in operation outside the hours of 12:00 to 01:00 the following day, unless otherwise agreed in writing with the Local Planning Authority.

Reason: To protect the amenities of neighbouring residents.

- 4 The outside courtyard area shall close and patrons shall vacate the area by 20:00 hours on any given day.

Reason: To protect the amenities of neighbouring residents

- 5 No deliveries or collections relating to the use of the premises shall be carried out outside the hours of 07:00 to 19:00 Mondays to Saturdays, with no deliveries or collections on Sundays or Bank Holidays.

Reason: To protect the amenities of neighbouring residents.

- 6 The designated bin storage area shown on approved plan 549.03.01 E shall be kept available for the storage of refuse bins and recycling boxes at all times.

Reason: In the interests of residential amenity

- 7 No refuse from the use hereby approved shall be emptied into any bins between the hours of 21:00 and 09:00 daily.

Reason: To safeguard the amenities of nearby residential properties and the local aural environment.

- 8 No amplified music/speech shall be played within the courtyard and any music played within the building shall be inaudible outside of the building.

Reason: To safeguard the amenities of nearby residential properties and the local aural environment.

- 9 The use shall not be commenced until details of acoustic attenuation as recommended in the submitted 'Environmental Noise Survey and Plant Noise Assessment Report' prepared by Hann Tucker Associates (ref.23835/PNA1 Rev2 and dated 12 December 2016), or any variation to the plant equipment that meets BS 4142:2014, have been submitted to and approved by the Local Planning Authority. The details shall include the exact siting and appearance of the plant units and any attenuation. The plant units and acoustic attenuation shall be installed in strict accordance with the approved details prior to commencement of the development and shall be retained at all times thereafter.

Reason: To achieve acceptable external site noise levels to protect the living conditions of occupants of the neighbouring properties.

- 10 No ventilation/extraction system shall be installed on the premises until details of such a system have been submitted to and approved by the Local Planning Authority. The details shall include its method of construction, odour control measures, noise levels and its appearance and finish. No cooking of food shall take place on the premises unless the approved ventilation/extraction system is being operated. Thereafter, any such system shall be installed and operated in strict accordance with the approved details.

Reason: To protect neighbouring residential amenity.

- 11 No external lighting, including lighting within the outside courtyard, shall be installed on the site, except in accordance with a scheme of external lighting that has been submitted to and approved by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved scheme.

Reason: To protect neighbouring amenity and visual amenity of the area.

- 12 Any doors adjacent to the public right of way footpaths shall open internally only, except for any fire escape door which shall be alarmed or be made of breakaway glass.

Reason: To avoid obstruction of the public footpaths.

- 13 The doors within the west (King Street) and north (public footpath) elevations of the premises shall not be used by patrons to enter or exit the premises, except in the case of fire or emergency.

Reason: In the interests of neighbouring residential amenity and to avoid obstruction of the public footpaths.

Informatives

- 1 This permission does not purport to convey any legal right to undertake works or development on land outside the ownership of the applicant without the consent of the relevant landowners.
- 2 The applicant/developer should be aware that any signage and associated illumination relating to the permitted use will require express advertisement consent.
- 3 Deliveries to the premises should preferably be undertaken by van or light goods vehicle only

Contact: Mark Fewster