



**4. Planning History:**

TM/49/10383/OLD grant with conditions 28 June 1949

Preliminary application for Erection of Shops and Flats.

TM/71/10568/OLD Application Withdrawn 13 January 1971

Formation of access road.

TM/73/11356/OLD grant with conditions 27 July 1973

New doors for Mrs. Cleeves.

TM/77/11131/FUL grant with conditions 8 June 1977

Change of use from dwelling to shop.

TM/80/11366/FUL grant with conditions 22 September 1980

Change of use to restaurant

TM/81/10239/FUL Application Withdrawn 4 June 1981

Shopping Precinct Stage II.

TM/81/10242/FUL Application Withdrawn 4 June 1981

Shopping Precinct, Stage 1 incorporating restaurant.

TM/88/11739/LBC grant with conditions 3 June 1988

Alterations to enable change of use of part of first floor restaurant to 2 no. guest rooms.

TM/88/11740/FUL grant with conditions 3 June 1988

Change of use of part of first floor restaurant to 2 no. guest rooms.

TM/89/11991/LBC grant with conditions 10 May 1989

Listed Building Application: Erection of conservatory at 1st floor level.

TM/89/12006/FUL grant with conditions 8 May 1989

Erection of conservatory at 1st floor level.

TM/97/01359/FL Grant With Conditions 23 January 1998

retention of 3 wrought iron gates and associated gate supports

TM/03/02278/TNCA No Objection 26 August 2003

To top to a height of approx. 3.8m, 2 no. multi trunked Sycamore trees and to lop side and upper branches of 1 no. Ornamental Cherry.

TM/04/03715/LB Grant With Conditions 10 December 2004

Listed Building Application: Internal and external alterations

TM/05/03099/FL Approved 8 October 2008

Installation of two air conditioning units, replacement extraction flue and two metre high bamboo screen to the rear terrace

TM/05/03101/LB Approved 8 October 2008

Listed Building Application: Installation of two air conditioning units and replacement extraction flue and two menu boards with internal static illumination and two metre high bamboo cane screen to the rear terrace

TM/05/03103/AT Approved 20 August 2007

Two wall mounted illuminated menu boards and freestanding illuminated sign

TM/05/03499/LRD Approved 20 August 2007

Details of floodlighting submitted pursuant to condition 1 of consent reference TM/04/03715/LB: Listed Building Application for internal and external alterations

TM/06/02612/FL Approved 21 December 2007

Change of use of first floor accommodation to restaurant and pre-drinks area

TM/09/00381/FL Approved 19 July 2011

Change of use of first floor accommodation to restaurant and pre-drinks area - temporary permission already approved under TM/06/02612/FL

TM/11/00360/TPO Approved

31 March 2011

Cherry tree - cut back overhang from footpath leaving the tree balanced.  
Sycamore trees reduce to approx. 15 ft.

**5. Consultees:**

5.1 PC: Raise no objections.

5.2 KCC Public Rights of Way: No objections.

5.3 EA: The landowner's work has improved the condition of the river banks which had been causing concern. We do not think there will be any adverse impact on flood flows, nor loss of flood storage.

5.4 Private Reps: 42 directly consulted + site and press notice; 23 letters of objection received raising the following issues:

- Potential noise and disturbance from opening hours.
- Noise and disturbance from the use of the first floor sound transmission.
- Noise and disturbance from customers standing in the street late at night talking and taxis coming and going.
- Nuisance from smokers being in the garden area.
- Noise disturbance and overlooking from first floor terrace.
- The work is retrospective.
- Harm to the Conservation Area from the removal of trees and shrubs.
- Impact upon land drainage.
- Adverse impact upon the setting of the Conservation Area with customers sitting in the garden area.
- No music should be allowed externally.
- Flood lights have been left on externally all night causing disturbance and nuisance.
- Concern with regard to refuse storage being in close proximity to neighbours, attracting vermin and causing odour and causing noise from crashing bottles.
- Concern with regard to noise from the use of the bins late at night and early in the morning.

- Lack of car parking in Aylesford village.
- Concern that the Council is not being pro-active in preventing the use.
- The development would contravene the Human Rights of the neighbours.
- For various reasons the application is inaccurate.
- The sound insulation which has been installed is inadequate and has no evidence that it would provide sound proofing. Further, a 1.5m area of wall has not been sound proofed and this is situated where there is mechanical equipment.
- Blocking kitchen doors has increased traffic movement from the kitchen along the boundary with number 11 which causes noise and disturbance.
- The applicant has carried out the works in the belief that once built the council would be disinclined to refuse it.
- There should be a restriction on the number of chairs and tables outside and the number of people using the space.
- There should be a restriction on music and electrical/mechanical/audio devices being mounted on the party wall.
- Taxis should be instructed to collect people from the rear car park.
- Concern with regard to smoking close to the boundaries with neighbouring properties.
- There should be structures/methods to prevent customers looking over the boundary fence into the garden of number 11.
- All electrical equipment/lighting externally should be switched off by 11pm.
- Concern with regard to the lack of clarity on the events which may occur at the premises.
- A fence should be constructed on the boundary with nos. 5, 5A and 5B High Street.
- Traders visiting the site block the access to the neighbouring properties.
- The development would double the amount of usable restaurant space, significantly increasing the amount of customers visiting the premises.

**6. Determining Issues:**

- 6.1 The application property was originally granted planning permission in 1980 for the whole building and land to be used as a restaurant. Following investigations into alleged unauthorised use of the garden and the first floor of the buildings, which led in part to this application, it has to be concluded that the 1980 permission conferred rights to use the garden areas in association with the restaurant. The planning permission granted has no hours of use conditions; however, the site was subject to a legal agreement which stated that the premises could not be open later than 12am (midnight) on any day except Bank Holidays when opening hours extend to 2am, or any other date which had been approved in writing by the Local Planning Authority. That agreement remains in force. In 1988 a subsequent planning permission was granted to allow the use of the first floor as guest accommodation and no longer as a restaurant use. In 2006, and again in 2009, temporary planning permission was granted for the first floor to be used as a restaurant. This latter permission has now lapsed and the use rights of the first floor returned to guest accommodation. The applicant is now seeking permission to re-establish the restaurant use as in the 1980 permission.
- 6.2 The Hengist is an established restaurant (albeit with new owners) situated on the High Street in the centre of Aylesford village. Aylesford High Street is a mix of residential and commercial premises which creates a rich blend of uses, contributing to the vitality of the village centre. Government guidance contained within the NPPF seeks Local Planning Authorities to be supportive of economic growth, to operate to encourage and not act as an impediment to sustainable growth. This needs to be balanced against the need to ensure that a development would not cause irrevocable harm to the environment and to protect the social welfare of existing and future residents.
- 6.3 The proposed development would allow for the continued use of a sustainably located established restaurant in the heart of the village centre, essentially consistent with the original 1980 permission. The continued use of these premises positively contributes to the character and economic vitality of Aylesford High Street. The proposed development would therefore would be acceptable in principle, subject to the detailed environmental and social sustainability issues being fully considered.
- 6.4 Policies CP1 and CP24 of the TMBCS 2007 and policy SQ1 of the MDEDPD (2010) require high quality design which reflects the local distinctiveness of the area and respect the site and its surroundings in terms of materials, siting, character and appearance. The site is located within a Conservation Area and the building itself is Grade II Listed. Any development therefore needs to ensure that no adverse impact is caused to the character and appearance of this sensitive setting.

- 6.5 There have been minimal changes to the external appearance of the existing building, with only a replacement door installed in the rear elevation of the building. This would have a negligible impact upon the overall appearance of the building and would not cause harm to the visual amenity of the locality.
- 6.6 The development has involved a re-design of the original garden area including the extension and re-laying of a patio area and the reinforcement of the culvert which runs through the centre of the site. In addition, new fencing and walling have been installed around the site boundary with the footway, and roping and barrels are proposed to be installed along the edge of the culvert. These works have generally improved the appearance of the garden area, enhancing the setting of the rear of the Listed Building and positively contributing to the character of the conservation area.
- 6.7 The applicants have also installed a wooden bin store within the garden area on the opposite side of the footpath to the restaurant building. The store allows the necessary commercial bins to be screened from public view which represents a visual improvement upon the lawful situation whereby the bins could be openly sited in the same location.
- 6.8 In light of the above, the proposed development has improved the appearance of the rear of the Hengist, enhancing the setting of the village conservation area and Grade II Listed Building.
- 6.9 A key concern of the local residents relates to the impact of the use upon their residential amenity. The issues raised include noise and disturbance caused from the proposed opening hours, the use of the garden area, the potential noise caused from live bands, the position of the bin store in relation to neighbouring residential properties and noise transmission through the walls at first floor level.
- 6.10 Given the history of the site as a whole, going back to 1980, there is no practical opportunity to control hours of operation under the planning regime, other than through the 1980 legal agreement or, in respect of the first floor, the 2006 consent. The context of the site has changed since 1980 in that there are new dwellings nearby and a dwelling, previously directly associated with the restaurant, which is now occupied independently. This does not, of course, affect the Council's other powers that may exist under Licencing or Environmental Protection controls, but these are quite separate from planning decisions.
- 6.11 Aylesford village is an historic village with a tight knit urban grain and, as stated above, the High Street is a mix of commercial and residential properties. The Hengist sits in between residential dwellings, attached to number 11 to the west and separated from number 5A to the east by a small pedestrian passageway. Residential neighbours have gardens which adjoin to the garden of The Hengist.

- 6.12 The restaurant has operated since 1980 with opening times restricted on the ground floor to 12 midnight except on Bank Holidays when the restaurant is permitted to be open until 2am. In 2009, when the most recent temporary planning permission was granted for the use of the first floor, the hours of use were restricted to 10am - 1am Monday to Friday, 10am – 2am on Saturdays and 10am - 9pm Sundays and Bank Holidays. With the first floor level terrace area to the rear being allowed to open 09:00 -21:00 or dusk, whichever is earlier, on any day, with the doors kept closed at all times. The permission required that heavy drapes and carpets be installed at first floor level in order to prevent noise transmission to the adjoining neighbour. No noise complaint has been received by the Council since 2009 associated with the first floor use and therefore it can be concluded that these hours of use and noise attenuation measures prevented, in the past, harm being caused to residential amenity.
- 6.13 The site is situated in the centre of the village; some activity associated with commercial uses in the evening periods enriches the vitality of such places. However, this needs to be at an appropriate level so as to not cause detriment to residential neighbours through undue noise and disturbance.
- 6.14 The patio area to the rear of the restaurant is large in size and has the potential to host a significant amount of covers. The hours of use seek permission for food to be served outside until midnight Monday - Thursday and on Bank Holidays. Due to the proximity of residential neighbours, especially in light of the changes in context described in 6.9 above, these hours of use would seem to be excessive and would result in undue noise and disturbance during the late evening and night time period. It is considered reasonable to prevent the use of the ground floor external area to 11pm to prevent adverse impacts. The first floor terrace area, due to its elevated position and proximity to the neighbour's bedroom, would be restricted to 9pm as there is a greater risk of disturbance being caused if used later into the evening time.
- 6.15 The application seeks permission for the use of the whole of the internal area of The Hengist until midnight Monday to Thursday and on Bank Holidays, the downstairs until 1am on Friday and Saturday and 10pm on Sunday with the use of the upstairs restricted to midnight on Friday and Saturday and 9pm on Sunday. The hours of use do not appear unreasonable when considered in relation to the lawful hours of use dating from 1980 and those granted for the first floor in 2006 and 2009.
- 6.16 The neighbours have requested that a new screen be erected along the boundary of the upstairs terrace area to prevent overlooking from occurring to number 11. In light of the previous planning condition and the proximity of the development to the neighbouring property, I consider that this is necessary in order to protect residential amenity and may be controlled by condition.



- 6.17 The applicants have carried out works internally at first floor level in order to protect the adjoining neighbour from noise transfer between the restaurant and the bedroom of number 11. This sound insulation replaces the heavy curtains and carpeting required by the 2006 and 2009 temporary planning permissions for the first floor. The sound insulation has retained the carpet required by the previous permission and has an underlay which dulls the sound of floorboard movement. Further, the walls of the first floor dining room have been lined along the party wall which offers enhanced attenuation compared to the hanging of heavy curtains. It is considered that the internal works that have been carried out to prevent noise and disturbance to the attached neighbour are a significant improvement from the previously approved attenuation measures. Although the insulation does not completely prevent noise transmission it substantially reduces the impact to acceptable levels. This, along with the restricted hours of use would prevent harm from being caused to the residential amenity of the adjoining neighbour.
- 6.18 Concern has been raised by neighbours with regard to customers leaving the premises causing noise and disturbance by standing in the street talking and by taxis pulling up to collect people. As the road and footway are a public highway the Council is not able to prevent this from occurring. As such, to limit the hours of use of the restaurant for this reason would not be reasonable. What is able to be controlled are the hours of deliveries and the hours of disposal of rubbish as they would occur within the application site and have the potential to cause significant noise disturbance in the early morning which would be harmful to residential amenity. An appropriate condition could be attached to a planning permission.
- 6.19 The application site has no off road car parking provision associated with it, rather customers and indeed local residents within the village centre have to use the public car parks to the rear of the site. There is relatively heavy demand on the car parks due to the amount of residential properties also using these facilities. Whilst this is the case, the restaurant previously operated over two floors without any issues relating to inadequate parking provision. The proposed development would not place significant additional demand on village car parking.
- 6.20 The application site is located in flood zones 2 and 3 and is subject to tidal flooding. The development has resulted in the paving over of some of the garden area which decreases the permeability of the garden area. However, these works have been coupled with improvements to the culvert which runs through the centre of the site including cleaning it of litter and re-enforcing the sides. The EA has stated that they do not consider that the works will have an adverse impact on flood flows, or result in a loss of flood storage. Therefore it is considered that the development would not have a detrimental impact upon flood risk locally.
- 6.21 In light of the above assessment, the requirements of the NPPF, policies CP1 and CP24 of the TMBCS and policies SQ1 and SQ8 of the MDE DPD, I conclude that the proposal is acceptable subject to the imposition of conditions and possibly also the signing of a legal agreement restricting the use.

## **7. Recommendation:**

- 7.1 **Grant Planning Permission** in accordance with the following submitted details: Design and Access Statement dated 06.02.2014, Flood Risk Assessment dated 17.02.2014, Drawing 014.1578-006 P1 dated 17.02.2014, Existing + Proposed Plans and Elevations 014.1578-004 PI dated 06.02.2014, Existing Site Layout 014.1578-002 P1 dated 06.02.2014, Location Plan 014.1578-001 P1 dated 06.02.2014, Other PREMISES LICENCE dated 10.03.2014, Other HOURS OF USE dated 04.04.2014, Site Plan 014.1578-005 P2 proposed dated 04.04.2014, Proposed Floor Plans 014.1578-007 P1 dated 04.04.2014, Floor Plan 014.1578-003 P2 dated 04.04.2014, Drawing 014.1578-008 P1 dated 04.04.2014, Drawing 014.1578-009 P1 dated 10.04.14 and
- subject to a suitable legal mechanism (condition or legal undertaking) to provide control over the hours of use of the garden area as described in paragraph 6.13 and
  - subject to the following:

### **Conditions / Reasons**

- 1 No external lighting shall be installed on the site without the prior written consent of the Local Planning Authority.  
  
Reason: In the interests of amenity of adjoining residents.
- 2 The acoustic protection measures as detailed in [documents to be specified] shall be retained and maintained in perpetuity and shall not be removed or varied unless previously agreed in writing by the Local Planning Authority. (N.B. the full detail of this condition will be set out in a Supplementary Report.)  
  
Reason: In the interests of amenity of adjoining residents.
- 3 The playing of live and amplified music shall only take place within the ground floor of the restaurant building with the doors and windows kept closed. No music shall be played in the external areas or first floor of the premises other than background music, and the playing of such music shall cease by 23:00 daily.  
  
Background music means recorded music played at a low level which is not the main focus of patrons and enables normal conversation to take place unhindered or unaffected by the playing of music.  
  
Reason: To safeguard the amenities of nearby residential properties and the local aural environment.
- 4 No refuse shall be emptied into the bins within the designated refuse storage area between the hours of 22:00 and 10:00 daily.

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

- 5 There shall be no deliveries before 0730 or after 1830 hours Mondays to Saturdays, before 0900 or after 1400 hours on Sundays or Bank or Public Holidays.

Reason: To protect the residential amenity of the locality.

- 6 Within 1 month from the date of this permission, details of a privacy screen to be positioned on the first floor terrace on the boundary with number 11 High Street, shall be submitted to and approved in writing by the Local Planning Authority. The approved screen shall subsequently be installed on the site within 1 month of the date of the approval and shall be retained in perpetuity.

Reason: In the interests of amenity of adjoining neighbours.

Contact: Kathryn Holland