

Aylesford
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572214 158029 8 February 2014

TM/13/03491/FL

Proposal: Installation of a mobile fish van in car park (retrospective)
Location: Holtwood Farm Shop 365 London Road Aylesford Kent ME20
7QA
Applicant: Chummys Ltd

1. Description:

- 1.1 Full planning permission is sought retrospectively for the stationing of a fish sales van on the paved footpath and within one car parking space to the front of the existing farm shop. The development proposes the use of the van for A1 (retail) purposes only which allows for the purchase of food to be consumed off the premises. The A1 use also does not allow for any cooking to occur from the van.
- 1.2 The fish van measures 4m in width x 2.5m in depth x 2.4m in height and sits on the paved area to the front of the farm shop. The van has an awning which opens over the first car parking space closest to the shop.
- 1.3 The fish sales van was the subject of an enforcement report to APC3 in February 2014 and this application, to a degree, arise from the circumstances surrounding that report.

2. Reason for reporting to Committee:

- 2.1 The application is being reported to the Planning Committee at the request of the Ward Member, Cllr Balcombe, and also in light of the level of public interest.

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:

TM/58/10442/OLD Refuse 1 January 1958

Outline Application for residential development

TM/59/10526/OLD grant with conditions 31 December 1959

Outline application for Extension to Retail Sales.

TM/60/10301/OLD grant with conditions 8 August 1960

Alterations and additions to shop and store

TM/60/10677/OLD grant with conditions 24 March 1960

Alterations and continuation of use as retail sale and storage.

TM/69/10916/OLD grant with conditions 19 March 1969

Erection of a canopy

TM/75/10447/FUL grant with conditions 3 December 1975

Improvement of both access to A20, provision of better car parking facilities and the levelling and tidying of the whole of the site.

TM/79/10606/FUL grant with conditions 30 October 1979

Temporary siting of caravan.

TM/84/10082/FUL Refuse 27 July 1984

Single storey extension to farm shop, to form butcher's shop, cold store and preparation area and carry out alterations to existing front elevation.

TM/85/11304/FUL Grant 8 July 1985

Retrospective application to erect boundary fence.

TM/86/11397/FUL Refuse 13 October 1986

Single storey extension to form storage area.

TM/90/10336/OUT Application Withdrawn 1 August 1990

Outline application for new access, 2000 sq. feet farm shop, public open space, and 30 No. dwellings and associated garaging/car parking.

TM/90/11193/OUT Application Withdrawn 7 September 1990

Outline application for formation of new access to London Road and development of the site for residential purposes.

TM/91/10218/FUL grant with conditions 9 July 1991

Demolition of existing separate buildings and replacement with one new building of same total area and new external works.

TM/91/10703/OUT Application Withdrawn 12 March 1991

Outline application for the demolition of existing separate buildings and siting and means of access to single building of same total area.

TM/13/03356/AT Refuse 10 January 2014

Advertisement consent for 3no. fascia signs

13/00305/WORKM Enforcement notice served 24 February 2014

The material change of use of land from use within Use Class A1 to a mixed use comprising elements falling within Use Class A1 & A5 of the Town and Country Planning (Use Classes) Order 1987 (as amended), being a use for the sale of hot food for consumption off the premises, by the stationing of a mobile catering unit on part of the site.

5. Consultees:

5.1 PC: Strong objection to this application. It is too close to neighbouring properties causing strong odours and loud noise from customers. We believe that residents have lodged strong objections to the application.

5.2 KCC Highways: In order for this proposal to attract a highway objection a demonstrable severe road safety impact would, under the new National Planning Policy Framework, need to be apparent. For a retail floor area of 300m² the County Council's parking standards require a maximum of 17 car parking spaces to be provided and the Holtwood Farm Shop's provision is in line with that standard.

Comments regarding the popularity of the fish stall could in many ways be a source for concern and, whilst it is considered that this shop is nearing the limits of operational capacity, it is also considered that a limited amount of appropriate roadside parking on the A20 is available and acceptable. It is also considered that any additional parking in Russett Close is not a discernible road safety issue but more one of amenity.

On balance, it is considered that with appropriate conditions regarding the size of the mobile unit and possibly a temporary permission, allowing for a review, it is considered that the Highway Authority would not be able to sustain an objection to the application.

5.3 Private Reps (including responses to site and press notices): 23:171S/0X/33R + 1 petition in support and 1 petition objecting to the proposal.

171 letters of support and a petition making the following comments:

- Signs should be acceptable due to their location close to Aylesford Retail Park.
- Fish stall does not remove parking area.
- The business has 5* for cleanliness.
- The business serves the local and wider community.
- Chummy's attracts people to the farm shop.
- Government policy is to support small businesses.
- The Council is persecuting the owner of the farm shop and trying to drive him out of business.
- Noise has not increased - the site is already situated in a noisy area.
- Chummy's do not cook anymore therefore there is no risk of fire/explosion.
- Commercial vehicles do not park on Russett Close.
- There are no parking restrictions on Russett Close.
- Residential development is out of character with the area as the farm shop was established before Russett Close was built.
- No issues of waste disposal.

33 letters of objection and a petition making the following comments:

- Smells in neighbours' back gardens.
- Loss of parking to serve other businesses on the site.
- Russett Close is being used as overflow car parking.
- The appearance is out of character with the local area.
- Waste issues.

- Activity is inappropriate and not in keeping with the current trading activity or the original intent when the site was established.
- Fish bar has been allowed to operate for a long time without approval.
- Concern with regard to the amount of signage.
- The development has resulted in an increase in seagulls.
- Highway safety issues associated with vehicles backing up onto the A20 to access the site.
- Suggest van is located at Quarry Wood.
- Fire/explosion risk from van.
- Development is not sympathetic to the ethos of the farm shop selling organic produce, plants and animal foodstuffs.
- HGV parking on the A20 has increased since the van was installed.
- Risk of vermin.
- Impact upon property value.
- Concern with regard to the 7 day a week use and the hours of use.
- Bad language of customers using the food van.
- Letters of support have been provided by people who do not live in the local area - concerns of local residents should be given more weight.
- The Council has a debt to the local residents to ensure their residential amenity as the Council permitted housing in Russett Close adjacent to the farm shop.

6. Determining Issues:

- 6.1 The development requires the benefit of planning permission for two reasons. Firstly, the fish van, whilst being described as mobile, is actually permanently stationed on the site; it is never moved from the position indicated on the proposed site plan. By virtue of this permanence and the lack of mobility, the stationing of the van on the land has resulted in the creation of a permanent use of land and stationing of a structure. Secondly, the awning of the fish van, when open, projects across one of the parking spaces serving Holtwood Farm Shop. These parking spaces are controlled by planning condition on the 1990 planning permission which prevents their loss without permission being granted by the Council.

- 6.2 In February 2014 an enforcement notice was served against the material change of use of the land from a solely A1 (retail) use class to a mixed use comprising both A1 in the form of the existing shop and A5 (hot food takeaway), by the stationing of a mobile catering unit, this current unit, on part of the site. The unit supplied fresh fish, cold cooked fish as well as hot cooked fish. Since the time of the service of the enforcement notice, the applicant has agreed that no cooking will take place at the site. All food being sold, whether or not previously cooked, is cold and consumed off the premises which changes the use class of the fish van from A5, as identified in the enforcement notice, to A1 (retail) in line with the wider A1 use of the planning unit. The cessation of the on-site cooking is key in this aspect of the use of the site.
- 6.3 The NPPF along with policy CP1 of the LDFCS (2007) and policy CC1 of the MDEDPD (2010) place sustainability at the heart of decision making, ensuring that new development does not cause irrevocable harm to the environment and balancing this against the need to support a strong, competitive economy and protect the social welfare of existing and future residents.
- 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.
- 6.5 The proposal would allow for the establishment of a new business on an existing retail site adjacent to the A20. The site is easily accessible from nearby residential areas on foot and by cycle and offers the opportunity for linked trips to the farm shop. The development also accords with the thrust of the NPPF which seeks to support economic development in sustainable locations. Providing that the previously problematic issue of cooking can be adequately controlled (see below) then the proposal could, in respect of the site itself, be seen as sustainable.
- 6.6 The fish van is visible from the A20 due to its position to the front of the farm shop. It is, however, set back a considerable distance from the highway, behind the front entrance to the farm shop. This partially screens the van from public view and significantly limits its impact within the street scene. The development is located within an existing retail site which has a significant area of hardstanding and a relatively large retail building. The stationing of the van in this location would not detract from the established character of the retail site or wider visual amenity of the locality.
- 6.7 Development plan policy along with the NPPF requires that all new development does not result in harm to the residential amenities of neighbouring properties in order to allow for environmental and social sustainability.
- 6.8 Neighbouring residents have raised considerable concern with regard to noise, disturbance and odours occurring from the fish van. When the fish van was originally stationed on the site sea food was cooked at the premises and served to

customers. This resulted in cooking smells being transferred into the neighbouring residential gardens. An Enforcement Notice was served to require the removal of the fish van due to the smells from cooking causing unacceptable harm to the residential amenity of the neighbours. Since the time of the submission of the application the applicant has confirmed that they no longer cook food at the site. This largely prevents any strong odour from occurring and limits the impact upon residential amenity.

- 6.9 A further local concern related to noise and disturbance from customers of the premises who remain in the car park consuming food purchased from the van. Originally there was a seating area placed in the car parking space in front of the van which encouraged customers to sit and consume food. The applicant also installed a condiments table which encouraged customers to stand and eat. The seating area has already been removed and the applicant has also now agreed that the condiments table will be removed to further dissuade customers from remaining at the site to eat. This would allow the fish van to be used only for A1 (retail) purposes in accordance with the planning permission for Holtwood Farm Shop. As customers would not remain at the site to eat, the amount of noise and disturbance to neighbouring properties would not be considerably more than that caused by the use of the existing farm shop use.
- 6.10 The applicant applied for opening hours of 9am - 6pm, 7 days a week. At present the van is open for business on a Friday, Saturday and Sunday from 10.30am-6.30pm. It would appear reasonable to condition the hours of use to these existing hours in order to prevent unacceptable noise and disturbance being caused to the neighbouring residential properties during the quieter weekend periods.
- 6.11 Policy SQ8 of the MDEDPD states that development will only be permitted where it would not significantly harm highway safety and where traffic generated by the development can be adequately served by the highway network.
- 6.12 The overall site originally had space for 20 cars to park: the development has resulted in the loss of 1 parking space when the fish van is in operation. KCC Highways confirm that the maximum parking standards for the A1 use including the fish van requires the provision of 17 car parking spaces. The development therefore retains sufficient off road car parking space to serve the enlarged retail use.
- 6.13 Neighbours to the site have reported increased parking on Russett Close to the rear and on the A20. Both roads are unrestricted in terms of parking and are able to safely accommodate on road parking without harm being caused to highway safety. It is difficult to identify if any of this parking is directly attributable to this additional facility at the site. Access to the site is provided from an in-out driveway which is situated to the north of the site. Neighbours have advised that they have witnessed vehicles queuing back onto the A20 along the access road which causes harm to highway safety. However, again, it is difficult to identify whether

this is attributable to the use the subject of the application. Vehicle speeds at this section of the A20 are relatively low due to the merging of two lanes into one on the London bound carriageway and vehicles backing up along the access are likely to be a relatively limited occurrence. KCC Highways has stated that it does not consider there to be any adverse highway safety implications as a result of the development; however, it acknowledges that the site is likely to be reaching its maximum capacity. The highways authority therefore suggests that a temporary permission is granted in order to monitor the parking and highway safety implications of the development. This would appear to be reasonable and appropriate in light of neighbours' concerns and would also aid a continuing assessment of the impact of the development upon residential amenity. A temporary period of 1 year is considered to be a suitable period of time for the monitoring to occur.

- 6.14 Letters of objection and support both raise the issues of signs at the premises. These do not form part of the consideration for the current application. Initial steps have already been taken against unauthorised signs and the site owner has been invited to consolidate signage to improve the overall appearance of the site, while maintaining the business presence.
- 6.15 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 restricting the use and limiting it, in the first instance, to 1 year, to enable the use as now configured to be monitored.

7. Recommendation:

- 7.1 **Grant Planning Permission** in accordance with the following submitted details: Other LETTERHEAD dated 05.12.2013, Location Plan dated 05.12.2013, Block Plan dated 05.12.2013, Email dated 13.01.2014, Notice dated 04.02.2014, Email dated 07.02.2014, Email dated 08.02.2014, Email dated 24.03.2014, subject to the following:

Conditions / Reasons

1. 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.

2. The premises shall not be open to the public other than between the hours of Friday to Sunday 1030 to 1830.

Reason: To protect the residential amenity of the locality

3. 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

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

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

Contact: Kathryn Holland