

**East Malling & Larkfield TM/13/01650/FL  
East Malling**

**Erection of a single storey detached building to be used as a parish room at Church Of St James Church Walk East Malling West Malling Kent for Mrs Anna Ashbee**

PC: The additional information provided shows proposed piling for the new building. We are not sure if this is not more a building regulation matter and assume the piling would not be visible? It is assumed piling may cause greater disturbance to graves and with grave 'voids' may have technical issues.

It is noted that the plan shows a replacement yew tree and new beech hedging which is welcome.

EMCG: Detailed comments have been received in relation to the submitted foundation details. Concerns are raised regarding the impact of the piling works and general construction traffic would have on the church and other surrounding listed features.

Concerns are also raised regarding the impact of construction vehicles and the construction works.

No additional information has been provided about the impact of the loss of the 200 year old yew tree, the impact of the change in water levels due to the loss of the water uptake from the tree and the impact of the rotting of the tree roots on the land stability.

Applicant has now recognised that the building can be seen from Church Walk and has now proposed a beech hedge. It is not considered that this would enhance the character of the Conservation Area.

Works do not accord with the fundamental requirements of the Planning (Listed Building and Conservation Areas) Act as they would not preserve or enhance the character of the area.

The proposal should be refused and the applicant should revert to the first scheme proposed in the southern corner of the church yard. Construction traffic would then be able to use the grass verge in The Grange and gain access from the bellmouth. Siting the building here would remove the need for piled foundations.

One further letter of objection received from a neighbour raising concerns that whilst the piled foundation plans may be satisfactory where appropriate to the site it is not possible to make this assessment without a study of the underlying geology. Given this lack of detail

it is hoped that the Planning Committee will require the applicants to produce revised plans for the foundations of the building based on the results of a full professional investigation of the geology of the site, and should be significantly detailed to enable a valid judgement to be reached as to whether or not they adequately safeguard the churchyard retaining walls.

DPHEH: The comments above are noted. The majority of the points raised by the EMCG relate to construction matters that are not normally covered under Planning legislation. However, as Members are aware we agree with EMCG that *in respect of the way in which the piling process may affect the Heritage Assets in this vicinity*. The methodology for the piling required under condition 9 would cover those *relevant* issues raised. The Council's own Engineers have viewed the proposal and conclude that the *principle* of the piled foundations is satisfactory subject to the submission of an appropriate methodology as required by condition 9.

The Landscape Officer's assessment is that the yew is not as old as 200 years and in any event I consider that the impact of its loss is being overstated in the balance of all factors. Yews have a very low water uptake and are able to grow in restricted positions. Notwithstanding this position it would be undesirable for the tree to be removed unless and until the contract for the building is let and the development is commenced. A condition is proposed to this end.

The EMCG would prefer the building to be constructed in the other corner of the site and accessed gained from The Grange. It has to be remembered that it is the current proposal that is the one for consideration and there is no submission for a building in this location. The alternative position was discounted prior to the application being submitted as it would be too distant from the Church and it would not be possible to provide appropriate disabled access from the Church to a building in this position and this would not meet the underlying community need.

While not directly a consideration in the determination of this case it might be noted that the EMCG's proposition to use The Grange for construction vehicles would potentially disrupt more residents and have a greater impact on the general character of the area as a whole.

Notwithstanding the comments of EMCG regarding the impact on the Church, the surrounding area and the Conservation Area as whole I consider that the building design would be acceptable in this location and the development would not harm the character of the existing buildings or Conservation Area. The works are considered not to detract from the character and setting of either the Church, other nearby Listed Buildings or the Conservation area and meet the appropriate requirements to satisfy these controls.

**Recommendation changed.**

**Additional condition:**

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No vegetation clearance works shall be undertaken before a contract for carrying out the construction works has been made and all relevant permissions have been granted for the development.

Reason: To ensure that any vegetation clearance is carried out as a continuous operation with the development of the site, in the interests of visual amenity. *(final detailed wording to be agreed with DCS)*

**Aylesford  
Aylesford**

**TM/14/00459/FL**

**Installation of replacement and new external patio area, and change of use of first floor and external area to restaurant (A3) use. (Part retrospective) at 7 - 9 High Street Aylesford Kent ME20 7AY for Swift Roofing Contracts Ltd**

DPHEH: The applicant has provided a plan showing sound insulation which has been installed along the whole party wall at first floor level. In addition a plan showing accurately the siting of the proposed bin store has been submitted.

12 additional letters of objection received from neighbouring 5 properties raising the following points:

Raise concern at the proposed hours of use and request that conditions limiting the use of the whole of the outside to 9pm or dusk (whichever is the earlier) and restricting the use of the first floor to 11pm Monday to Friday, midnight on Friday and Saturday and 9pm on Sunday as per the previous temporary permissions. It has been suggested that simply because complaints have not been lodged with the Council with regard to noise disturbance this does not mean that this has not occurred.

Raise concern with regard to noise from people in the street after the restaurant closes and taxi's pulling up outside with engines running and car doors slamming.

Request that the screen wall required by planning condition to the western boundary has more specific requirements such as being a solid, continuous screen of substantial design and of a minimum height. A request has also been lodged that a screen is installed along the eastern side of the balcony to prevent overlooking to neighbours 1-5 High Street.

It has been highlighted that the fence along the boundary with number 11 is not 1.8m high as shown on the proposed plans but is rather approximately 1.1m high. This allows for patrons using the garden area to directly look into the garden of number 11, causing harm to their privacy.

The only access from the kitchen to the rear patio is from a kitchen door adjacent to the boundary with number 11. The increased intensity of use of this door would cause unacceptable noise and disturbance to the neighbouring dwelling.

Although the sound insulation along the internal party wall has meant that airborne sound transfer has improved, there has been an issue of impact and vibration sound transfer. A low humming can be heard from coolers which have been installed adjacent to the party wall at ground floor level or possibly in the first floor serving area.

The intensity of the use of the patio would cause unacceptable noise and disturbance to the neighbouring dwellings. Further, the laying of the patio will have caused harm to flood risk.

External lights cause a disturbance to the neighbours, a request has been made that these lights (other than lighting of the footpath) are switched off after 11pm when the use of the external area would cease.

It has been pointed out that the location and design of the bin store are incorrectly shown.

The applicant has a jazz event advertised for 25<sup>th</sup> May 2014 which is a Sunday and contrary to their licence.

The location of the smoking area would cause unacceptable harm to the residential amenity of the neighbouring properties.

Concern with regard to noise from air conditioning units

A neighbour has requested data to back up statements in the Committee Report such as with regard to parking and visual and residential amenity impact.

The area to the rear of the Hengist which has now been laid to patio was the subject of a restrictive covenant imposed by the Council preventing built development from occurring on the land.

DPHEH:

It must be remembered that the context for this proposal is the terms of the original planning permission in 1980. To be clear the hours subsequently approved in the 2006 planning permission for the upstairs restaurant area were extended as part of the 2009 planning permission in line with the hours outlined in the Committee Report. The outside patio area on the ground floor can lawfully be used until 12am, however, the Council has obtained the agreement of the applicant to closure of service at 11pm on the ground floor. On the first floor terrace there is an increased likelihood of disturbance being caused and therefore the hours of use should be restricted to 9pm. The previously utilised condition of the cessation of use at dusk has been avoided in favour of a fixed time as dusk is an ambiguous term.

The Council has no planning control with regard to customers standing in the public highway or with regard to taxis pulling up on the road to pick-up customers and of course this has been the position since 1980. An informative may be added to the permission to encourage an approach that pick-ups should be from the rear car park in order to minimise noise and disturbance from customers leaving the premises.

It is noted that the neighbours make the point that although no noise issues were reported that this is not a sign that noise was not an issue. For the Council any such reports act as a log to monitor the noise climate of the locality. In the absence of any reports of noise disturbance the Council has no evidence of any noise disturbance being caused.

The condition for the screen at first floor level could usefully be amended to include the unambiguous requirement for it to be of a solid, imperforate design measuring 2m high from first floor terrace level. This would prevent overlooking from occurring to the neighbour at number 11. There was not a requirement for a screen to be installed on the eastern side of the terrace as part of the previous temporary permissions. And as The situation with regard to overlooking has not changed since this time and therefore it would be unreasonable to require additional screening along the eastern boundary.

An additional condition requiring the installation of a 2 metre high close board fence along the boundary with number 11 would prevent the erosion of privacy to their most private garden by increased use of the reformed patio. The Council has no control over the use of the kitchen door as it is an existing opening in the building but -the fencing to be required along the boundary with number 11 would also have the benefit of providing some screening from the use of the kitchen door closest to the boundary.

Noise transmission from voices within the building has been reduced as a result of the sound proofing measures along the party wall. This insulation along with the condition requiring only background music to be played would mean that there should be no noise transfer at first floor from music bass or vibrations such would justify resisting the grant of planning permission. The floor is carpeted and has an underlay which is also an improvement from the previous permission which required a thick carpet only and therefore should limit sound transfer from impacts. The Council's Environmental Health team have written to the owners with regard to vibration transfer through the wall and will investigate this and if a suitable solution is not provide there is the possibility of intervention under statutory nuisance powers.

The use of the whole of the garden as a restaurant was permitted by virtue of the 1980 consent, and as such it is the laying of the patio on a physical works basis that requires planning permission. Although plants have been removed to make the area more usable, their removal would not require permission. The Council are therefore not in a position to prevent the use of or control the intensity of the use of the external area at ground floor level through the planning system except to the extent above with regard to offered hours of use.

With regard to flood risk, the Environment Agency has visited the site and have confirmed that the development would have no adverse impact upon flood risk.

A condition ensuring external lights are switched off after 11pm would be reasonable given the fact that the external area would not have planning permission to be used past this time. Lighting of the footpath would be allowed to remain switched on to ensure the safety of pedestrians.

An amended plan showing the bin store in its correct location and with correct orientation has been received and will be added to the list of plans.

The jazz event identified on 25<sup>th</sup> May 2014 has a Temporary Events Licence for music to be played between 2pm and 4.30pm.

The Council has no control in planning terms over the designation of a smoking area. Environmental Health can possibly intervene if this becomes a statutory nuisance.

The applicant has confirmed that there are to be no air conditioning units installed.

The Committee Report is written on the basis of the broad character of the 1980 planning permission and has been subject to professional officer judgements from site visits and taking account of representations from statutory consultees and neighbours and is not quantifiable in terms of data. So, for instance, we have not carried-out traffic or parking counts, not least because the site has never enjoyed on-site parking but the supply of off-street parking has increased by the formal creation of the car park on the south side of the bridge approach which didn't exist at the time of the 1980 permission.

The restrictive covenant was imposed by the Council in a legal agreement in 1980 in respect of the hard standing patio. The Committee Report considers the impact of the development and brings up-to-date the consideration of the matter. The existence of the S52 covenant does not embargo such development for ever and a day but rather prevents it occurring without the Council having an option to consider the proposal, as in this case.

**Amended Recommendation** subject to:

Amend condition 6 to:

Within 1 month from the date of this permission, details of a privacy screen to be of an imperforate design and not less than 2 metres in height to be positioned on the first floor terrace on the boundary with number 11 High Street, and a 2 metre high imperforate fence at ground floor level 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.

7. The existing external lights on the patio shall be switched off between the hours of 23:00 and 08:00 and terrace area between 21:00 and 08:00 .

Reason: In the interests of amenity of adjoining properties.

Informative-

The applicant is asked to consider the possibility of taxi and vehicular collection of patrons being made from the rear car park area, and to discourage congregation of person outside the front of the property, in order to protect the residential amenity of the occupants of the neighbouring dwellings.

**Aylesford**                      **TM/13/03491/FL**  
**Aylesford**

**Installation of a mobile fish van in car park (retrospective) at Holtwood Farm Shop  
365 London Road Aylesford Kent ME20 7QA for Chummys Ltd**

1 additional neighbour letter received raising no additional points.

**DPHEH: My recommendation remains unchanged**

**East Malling & Larkfield** **TM/13/03492/FL**  
**East Malling**

**Detached gymnasium and music room for use ancillary to main house at 354  
Wateringbury Road East Malling West Malling Kent ME19 6JH for Mr And Mrs Trevor  
Binger**

**Application Withdrawn at the request of the applicant on 29<sup>th</sup> April 2014**

