

East Peckham
East & West Peckham
Mereworth And Wbury

TM/24/00144/PA

Location: 32 Pound Road, East Peckham, Tonbridge TN12 5BE

Proposal: Proposal of New Cafe and associated parking

Go to: [Recommendation](#)

1. Description of Proposal:

- 1.1 This application seeks full planning permission for the erection of a replacement single storey café building.
- 1.2 The proposed building would be located primarily on a similar footprint as the former café building, albeit the proposed building would be curved in design.
- 1.3 The proposal also provides a disabled parking space to the rear of the café and additional soft landscaping.
- 1.4 Entrance to the café will be to the front of the building, similar to the existing. Internally the layout will provide an open plan dining area with a variety of seating options. The counter is to be positioned to the rear together along with the kitchen and storage area.

2. Reason for reporting to Committee:

- 2.1 This application is referred to committee by Councillor Matt Boughton in regard to concerns over parking provision, party wall and concern in relation to noise and smell pollution.

2. The Site:

- 2.1 The application site is situated to the north side of Pound Road within the urban confines of East Peckham. The site currently comprises a single storey flat roofed building, with garaging to the rear. The existing café building is attached to an end of terraced residential property fronting Pound Road. Access to the site is via Pound Road.
- 2.2 The area comprises residential dwellings, parade of shops along with other community facilities.

3. Planning History (most relevant):

- 3.1 Set out below is the original site history for the site itself, together with other relevant history as the site formed part of the recently approved 10-unit scheme to the rear.

Original history for the site itself

10/00762/FL - Approved - 26 May 2010 subject to conditions
Change of use from A1(retail) to A5 (takeaway)

10/02710/RD - Approved - 24 November 2010
Reserved details submitted pursuant to condition 5 (handling and storage of waste) and condition 6 (extraction details) of planning permission TM/10/00762/FL: Change of use from A1(retail) to A5 (takeaway)

Site to the rear

23/01385/FL - Approved – 2 April 2024
Section 73 application to vary planning condition No. 2 (plans) of TM/21/00286/FL along with details of river channel (Condition 11) (Demolition of existing buildings, including a dwelling house (34 Pound Road), and erection of a residential development comprising of 10 dwellings and associated works, parking and alterations to the access points to Pound Road (Renewal of planning permission TM/16/03380/FL)) (Amended to include details of Condition 11)

23/00510/RD - Approved - 21 November 2023
Details of condition 3 (Sample of materials), 5 (Archaeological Works), 12 (Flood Storage), 13 (Maintenance Schedule, Buffer Zone and Landscaping), 14 (Surface Water Strategy), 17 (Contoured Site Plan) and 18 (Construction Management Plan) submitted pursuant to planning permission TM/21/00286/FL (Demolition of existing buildings, including a dwelling house (34 Pound Road), and erection of a residential development comprising of 10 dwellings and associated works, parking and alterations to the access points to Pound Road (Renewal of planning permission TM/16/03380/FL))

23/00536/RD - Approved - 05 May 2023
Details of condition 6 (Site Investigation and Remediation Method Statement) submitted pursuant to planning permission TM/21/00286/FL (Demolition of existing buildings, including a dwelling house (34 Pound Road), and erection of a residential development comprising of 10 dwellings and associated works, parking and alterations to the access points to Pound Road (Renewal of planning permission TM/16/03380/FL))

21/00286/FL - Approved - 28 July 2022
Demolition of existing buildings, including a dwelling house (34 Pound Road), and erection of a residential development comprising of 10 dwellings and associated works, parking and alterations to the access points to Pound Road (Renewal of planning permission TM/16/03380/FL)

4. Consultees

East Peckham Parish Council

- 4.1 Concerned regarding the lack of parking facilities, 3rd party wall, the neighboring resident is concerned about noise and smell pollution. It has been reported this application has been “called in” by TMBC leader M. Boughton.

TMBC Environmental Health Food and Safety

- 4.2 The disabled WC opens directly into the customer dining area. Ideally a ventilated lobby should be installed to prevent the toilet opening directly into the dining area but as a minimum a self-closer should be fitted.
- 4.3 There are no details of the kitchen layout, and the applicant is advised to make contact with the Food and Safety Team prior to fit out - foodandsafety@tmbc.gov.uk

TMBC Environmental Health Protection

Contaminated Land

- 4.4 No comments to make on the application.

Environmental Protection

4.5 Odour/Noise

- 4.6 The applicant shall submit details to the Local Planning Authority of a ventilation system for the removal and treatment of cooking odours, drawing reference to the requirements and recommendations of the EMAQ+ document 'Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems'. The submission shall include a risk assessment for odour as detailed in Annex C of the EMAQ+ guidance.

- 4.7 The acoustic details shall include full spectrum octave analysis for the proposed ventilation equipment, demonstrating that the noise from the equipment shall not exceed NR35 at the nearest noise sensitive premises/site boundary; this would include any flat above the proposed premises.

- 4.8 There are no hours of operation listed on the application. It is noted the current approval for existing use states the premises shall only be open for the preparation and sale of food and drinks between the hours of 08.00 to 18.00 Monday to Saturdays and not at any time on Sundays or Public and Bank Holidays. This needs to be conditioned.

- 4.9 In addition, the following informative in relation to hours/bonfires is suggested.

4.10 To avoid undue disturbance to neighbours, during the demolition and construction phase, the hours of working (including deliveries) shall be restricted to Monday to Friday 07:30 hours - 18:30 hours. On Saturday 08:00 to 13:00 hours, with no work on Sundays or Public Holidays. Although it would not be possible at this stage under Environmental Health legislation to prohibit the disposal of waste by incineration, the use of bonfires could lead to justified complaints from local residents. The disposal of demolition waste by incineration is also contrary to Waste Management Legislation. The applicant is therefore advised to prohibit fires on site during the development stage of this project.

Environmental Agency

4.11 Based on the information provided no objection is raised.

Private Representations

4.12 Four letters of representations have been received; these are summarised as follow:

- Errors on the application form
- Inaccurate site Location Plan
- Lack of Consultation
- Access arrangements for extant permission
- Adverse impact on residential amenities – noise and disturbance
- Lack of noise assessment
- Insufficient parking provision
- The original permission required modifications to the kerb on Pound Lane and widening of the footway.
- Layby area to the front of 30 Pound Road forms part of the ownership of no. 30.
- Lack of construction management plan.
- New houses have already been built which is impacting on traffic/parking and the existing access
- Concerns over another food establishment being built in this small village another food establishment in the village would only apply pressure to all the other food business to survive.
- There is no public pathway leading to the shop entrance which could be hazardous.
- Not enough parking which could prejudice highway safety.
- Neighbouring property is attached to the entire length of the proposal.
- Loss of the historical connection between the cafe and the neighbouring property. Has any provision of insulation been considered for the neighbouring property.
- The proposal suggests that the current wall at the back of the garages will be replaced with a fence. However, this wall currently serves as the side of our outbuilding The wall also gives us privacy and security in our garden
- Removing the roof could cause water damage to the neighbouring property.

- We are concerned that during the reconstruction this will cause damage to our home, and cause noise and disruption.
- We don't have a party wall agreement in place. We have not been approached in any official capacity.
- The proposal is to build a café with seating, does this mean that the usage will change from A5 (takeaway) to A3 (restaurant)?
- Will the trading hours change from 7.30 am-2.00 pm Monday to Friday as they were with the previous owners?

5. Determining Issues:

Policy Guidance

- 5.1 Under the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the Local Planning Authority is required to determine planning applications and other similar submissions in accordance with the Development Plan in force unless material considerations indicate otherwise.
- 5.2 The Development Plan currently in force for this area comprises the Tonbridge and Malling Local Development Framework Core Strategy (TMBCS) adopted in September 2007, the saved policies of the Tonbridge and Malling Borough Local Plan 1998 (TMBLP), Development Land Allocations DPD (DLA DPD) adopted in April 2008 and the Managing Development and the Environment DPD (MDE DPD) adopted April 2010. The National Planning Policy Framework ("NPPF") and the associated National Planning Practice Guidance ("NPPG") and National Design Guide are important material considerations.

Matters for clarification

- 5.3 In view of the comments raised in relation to the demolition of the existing building, and the party wall, it is first important to set out the Council's position in relation to the demolition of the existing building in context to the assessment of this application.
- 5.4 Planning permission was granted in July 2022 under reference 21/00286/FL for the demolition of existing buildings, including a dwelling house (34 Pound Road), and erection of a residential development comprising of 10 dwellings and associated works, parking and alterations to the access points to Pound Road (Renewal of planning permission TM/16/03380/FL) (my emphasis added). This application has been largely implemented and the café building can be demolished under this consent. The demolition therefore does not form part of the consideration of this application.
- 5.5 Figure1 below show the extent of buildings to be demolished as part of that application, this included the demolition of the café, and the adjacent garages.

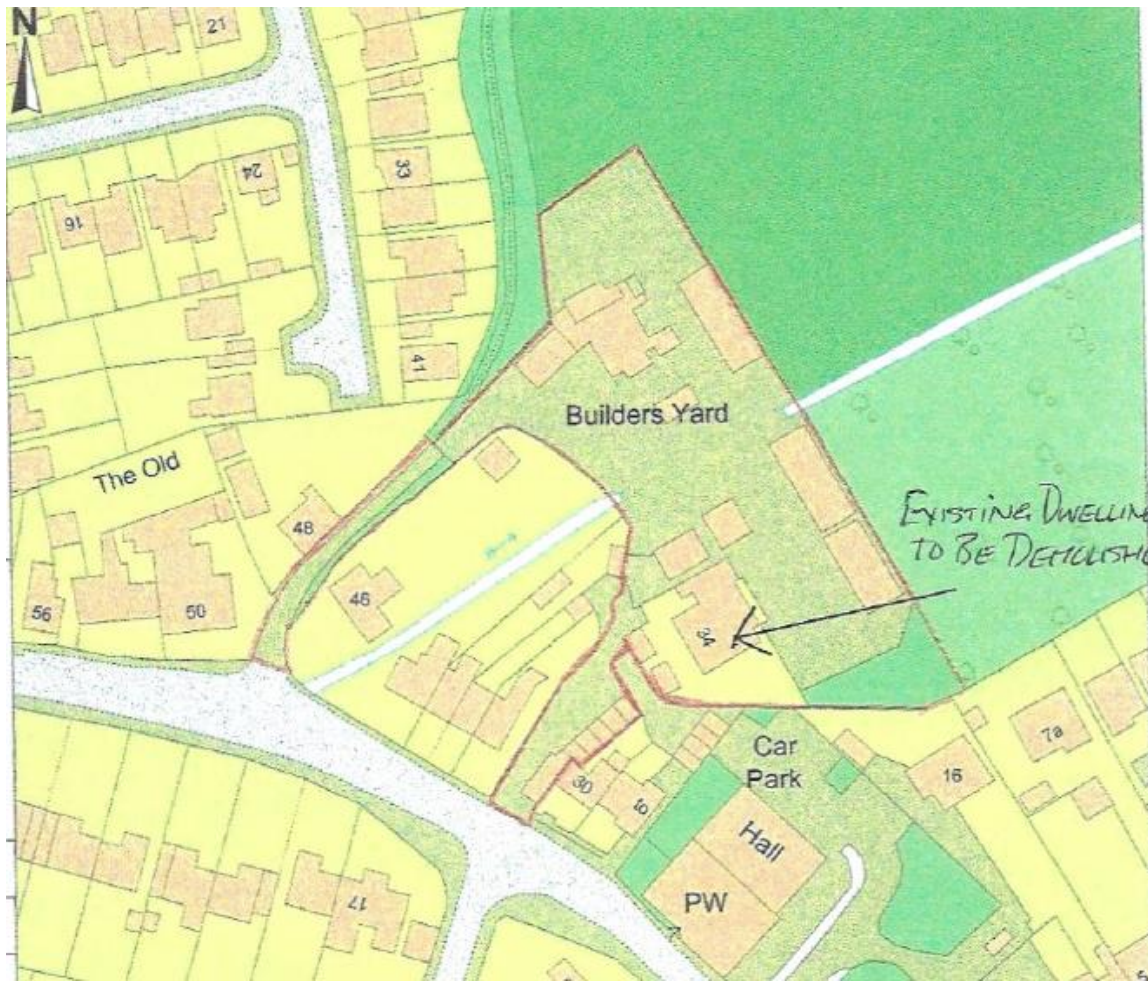


Figure 1 – Demolition site plan - 21/00286/FL

- 5.6 Whilst comments in relation to the demolition of the café and its relationship to the adjoining property have been noted, certain elements of the demolition of the building would be subject to a Party Wall Agreement, and this is not a planning matter. Party Wall Agreements are civil matters which are separate from planning permission approval falling outside the consideration of this committee. Serving a Party Wall Notice to adjoining building owners prior to commencing building works (those that fall within the Party Wall Act 1996) is a legal obligation.

Principle of Development

- 5.7 The site lies within the designated Rural Service Centre of East Peckham, wherein Policy CP12 states that housing and employment development or redevelopment, conversions and changes of use will be permitted within the confines of the rural service centre subject to other local plan policies.
- 5.8 Policy CP12 is considered up-to-date, and as such the proposed development accords with these aims and the requirements of this policy. Thus, there is no objection in principle to the development.

Character and Appearance

- 5.9 Paragraph 131 (NPPF) highlights the importance of creating high quality beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.
- 5.10 Paragraph 135 (NPPF) seeks to ensure that decisions result in developments which are visually attractive as a result of good architecture, layout and landscaping, and are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.
- 5.11 Policy SQ1 Managing Development and the Environment Development Plan, requires development to protect, conserve and where possible to enhance the character and local distinctiveness of the area.
- 5.12 Policy CP24 of the Tonbridge and Malling Borough Core Strategy requires that all development must be well designed and of a high quality in terms of detailing and use of appropriate materials, and must through its scale, layout, siting, character and appearance be designed to respect the site and its surroundings.
- 5.13 The proposed building would be single storey with a flat roof similar in height to the existing building. However, the building would be set further back within the site and has been designed with a curved frontage. The curved frontage not only ensures the previously approved access is maintained but it also provides the opportunity for additional soft landscaping.
- 5.14 The height of the building would be in keeping with the height of the adjoining property, which is similar to the existing.
- 5.15 It is considered that the building sits well within the street scene, with large windows providing a contemporary façade. The building would be predominately white render which will complement the surrounding area, a condition would be imposed for materials to be in accordance with the submitted plans.
- 5.16 Concluding on character and appearance, it is considered that the proposal would result in a well-designed scheme, which respects local character, subject to a condition regarding materials. As such would comply with paragraph 135 (NPPF), Policy CP24 of the Tonbridge and Malling Borough Core Strategy.

Neighbour Amenity

- 5.17 Policy CP24 of the Tonbridge and Malling Borough Core Strategy requires that all development must be well designed and respect the site and its surroundings. It

outlines that development by virtue of its design which would be detrimental to amenity will not be permitted.

5.18 Paragraph 135 (f) of the NPPF advises that:

“Planning policies and decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users”.

5.19 Third party comments have raised concerns in regard to the building being attached to the adjoining dwelling, and the removal of the garages along the boundary. As clarified above these matters relate to the demolition of the building/garages and would be subject to a Party Wall Agreement.

5.20 The building would be set back from the front boundary of the adjoining property and would extend to the rear of the dwelling.

5.21 It is considered that the building by reason of its size, appearance and location would not harm neighbour amenity by reason of overlooking, loss of light or privacy. However, a condition would be imposed in regard to external lighting. Consideration in relation to noise and disturbance from the use are discussed separately within this report.

Access and Parking

5.22 Paragraph 114 of the NPPF states that, in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that, inter alia, safe and suitable access to the site can be achieved for all users. Paragraph 115 adds that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

5.23 Policy SQ8 of the Managing Development and the Environment DPD states that development proposals should comply with the adopted parking standards and development proposals will only be permitted where they would not significantly harm highway safety.

5.24 This application proposes no changes to the access, and only seeks permission for the erection of the café building. Notwithstanding this, as stated previously the building has been designed, having specific regard to the approved assess under application no. 21/00286/FL and those conditions imposed in relation to that permission.

5.25 The applicant/agent has also provided a tracking plan, which demonstrates how the proposed building would sit within the context of the access road and clearly shows that the proposal building would not affect the approved access road (see figure 2).

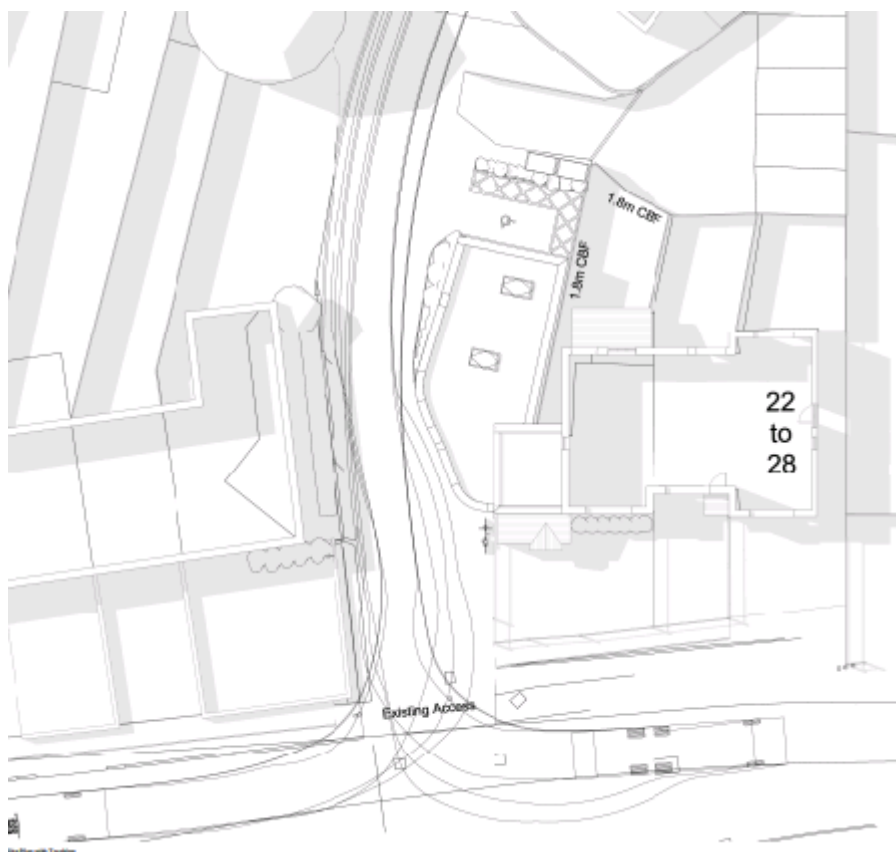


Figure 2: Tracking Plan.

5.26 Turning to parking, it is noted that under KCC Parking Standards SPG 4 (Table 2), that the proposed café would require, 1 space per 2 staff and a further 1 space per 6 sqm, therefore resulting in a parking requirement of approximately 10 spaces (as a maximum).

5.27 The application proposes one disabled parking space, located to the rear, on that basis, the application would see a deficit in regard to the parking provision. However, it is noteworthy that based on the same parking requirements, the previous cafe required a maximum parking provision of 4 spaces, however none were provided.

5.28 KCC Parking Standards SPG4 also notes for parking for non residential uses, *“It is widely acknowledged that limiting the amount of parking provided at the end destination of a trip can discourage journeys by car This is particularly evident where there are a range of alternative modes available in sustainable locations Therefore, the parking standards for non residential uses are maximum standards and lower provisions should be considered to encourage travel by other modes where appropriate The optimum method of determining the parking provision for non residential uses is often a ‘first principles’ approach, taking into account the development’s predicted parking requirements and local circumstances”*

5.29 In this case, given the previous parking provision for the site, its sustainable location coupled with no restriction in regard to on street parking and additional layby parking within the immediate area, it is not considered that the deficit in parking provision,

would prejudice highway safety. It is also noted that the mobile hot food takeaway unit within the immediate vicinity, whilst a mobile unit is located within the same position when operating and also provides no off-street parking provision.

- 5.30 Bin storage and refuse collection is proposed to the rear of the site adjacent to the disabled parking bay. The existing access already provides for a refuse vehicle to serve the dwellings to the rear.
- 5.31 Therefore, to conclude on access and parking, given the sites sustainable location coupled with the existing parking provision for the site and the parking provisions within the area it is not considered that the proposal would conflict with aims of KCC Parking Standards SPG4 or Policy SQ8 of the Managing Development and the Environment Development Plan Document. A condition would be imposed for the disabled parking space to be constructed prior to the commencement of the use and thereafter retained.

Landscaping and Biodiversity

- 5.32 Paragraph 180 of the NPPF advises planning decisions should contribute to and enhance the natural environment, including protecting and enhancing sites of biodiversity and minimising impacts on and providing net gains for biodiversity. Paragraph 186 of the NPPF states if significant harm to biodiversity resulting from a development cannot be avoided through relocation, mitigation or compensated for, then planning permission should be refused, whilst opportunities to improve biodiversity in and around developments should be integrated as part of their design.
- 5.33 Policy NE2 Managing Development and the Environment Development Plan, outlines that the biodiversity of the Borough and in particular priority habitats, species and features, will be protected, conserved and enhanced. Policy NE3 Managing Development and the Environment Development Plan also states development that would adversely affect biodiversity or the value of wildlife habitats across the Borough will only be permitted if appropriate mitigation and/or compensation measures are provided which would result in an overall enhancement. Proposals for development must make provision for the retention of the habitat and protection of its wildlife links. The Council will impose conditions, where necessary and appropriate, to minimise disturbance, protect and enhance a site's ecological conservation value, to ensure appropriate management and monitoring and creating new or replacement habitats of enhanced ecological value
- 5.34 In regard to biodiversity, as Members are aware, since the 2 April 2024, it is now a national requirement that small scale developments must provide at least a 10% biodiversity net gain. However, this application was submitted prior to the 2 April 2024 and therefore BNG is not applicable.
- 5.35 Notwithstanding this the application proposes an area of landscaping to the side of the building, which would visually improve the appearance of the area. A condition

would be imposed for the planting to be implemented prior to the occupation and maintained.

Noise and Disturbance

5.36 Paragraph 191 of the NPPF states that:

“Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid giving rise to significant adverse impacts on health and the quality of life”.

5.37 Policy SQ6 MDE DPD requires proposals for noise sensitive development, including housing, to demonstrate that noise levels are appropriate for the proposed use.

5.38 The Council’s Environmental Health Protection Officer has reviewed the application and raises no objection subject to conditions. In regard to odour/noise the applicant is required to submit details to the Local Planning Authority of a ventilation system for the removal and treatment of cooking odours, drawing reference to the requirements and recommendations of the EMAQ+ document 'Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems'. The submission shall include a risk assessment for odour as detailed in Annex C of the EMAQ+ guidance.

5.39 In addition, the acoustic details shall include full spectrum octave analysis for the proposed ventilation equipment, demonstrating that the noise from the equipment shall not exceed NR35 at the nearest noise sensitive premises/site boundary.

5.40 It is also noted that the application proposes no hours of operation. The approval for existing use stated the premises shall only be open for the preparation and sale of food and drinks between the hours of 08.00 to 18.00 Monday to Saturdays and not at any time on Sundays or Public and Bank Holidays and condition in this regard would be imposed.

5.41 Therefore, subject to conditions the proposal would comply with Policy SQ6 Managing Development and the Environment DPD.

Internal Layout

5.42 TMBC Environmental Health Food and Safety officer has viewed the application and notes the disabled WC opens directly into the customer dining area. Ideally a ventilated lobby should be installed to prevent the toilet opening directly into the dining area but as a minimum a self-closer should be fitted.

5.43 It is also noted that there are no details of the kitchen layout, and the applicant is advised to make contact with the Food and Safety Team prior to fit out - foodandsafety@tmbc.gov.uk. An informative would be added to bring this to the attention of the applicant.

Flood Risk

5.44 The proposed development sits within Flood Zone 2 & 3. Applications within Flood Zone 2 and 3 can require a Flood Risk Assessment and consultation with the Environmental Agency.

5.45 Policy CP10 Core Strategy states “within the floodplain development should first seek to make use of areas at no or low risk to flooding before areas at higher risk, where this is possible and compatible with other policies aimed at achieving a sustainable pattern of development”.

5.46 Paragraph 169 NPPF, notes if it is not possible for development to be located in areas with a lower risk of flooding the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed in line with the Flood Risk Vulnerability Classification set out in Annex 3.

5.47 Paragraph 171 (NPPF) confirms that both elements of the exception test should be satisfied for development to be allocated or permitted.

5.48 In this case, the application proposes the replacement of a building in the same use. The Environmental Agency has raised no objection to the proposal. As such no objection is raised in terms of Policy CP10 Core Strategy and paragraphs 169, & 171 NPPF.

Conclusion

5.49 In light of the above considerations, I put forward the following recommendation:

6. Recommendation:

6.1 APPROVE subject to the following:

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.

The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Existing Site and Site Location Plan Drawing No. 22-1226-600 Rev P01

Existing Elevation Drawing No. 22-1226-603 Rev P01

Existing Floor & Roof Plan Drawing No. 22-1226-602 Rev P01

Proposed Site & Site Location Plan Drawing No. 22-1226-604 Rev P01
Proposed Elevations Drawing No. 22-1226-605 Rev P01
Proposed Floor & Roof Plan Drawing No. 22-1226-602 Rev P01
Proposed Site Plan with Tracking Drawing No. 22-1226-SK01
Floor Risk Assessment by OSC architecture
Design and Access Statement by OSC architecture dated 25 January 2024
Ref:22_1226

Reason: To ensure the development is carried out in accordance with the approval and to ensure the quality of development indicated on the approved plans is achieved in practice.

3. All materials used externally shall accord with the approved plans - Proposed Elevations Drawing No. 22-1226-605 Rev P01 & Proposed Floor & Roof Plan Drawing No. 22-1226-602 Rev P01

Reason: In the interests of visual amenity.

4. The use shall not commence until full details of the ventilation system to remove cooking smells, including details of how it will be built and how it will look, to the requirements and recommendations of the EMAQ+ document 'Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems'. The submission shall include a risk assessment for odour as detailed in Annex C of the EMAQ+ guidance has been submitted to and approved by the Local Planning Authority.

The approved scheme shall be fully installed before use of the kitchen commences and shall thereafter be maintained in strict accordance with the approved details. No cooking of food shall take place unless the approved extraction system is being operated.

Reason: In the interests of the amenities of nearby properties.

5. The applicant shall submit acoustic details to the Local Planning Authority to include whole octave analysis for the proposed ventilation equipment, demonstrating that the noise from the equipment shall not exceed NR35 at the nearest noise sensitive premises/site boundary.

Reason: In the interests of the amenities of nearby properties.

6. The use shall not commence until the disabled parking area shown on the approved layout plan referenced Proposed Site & Site Location Plan Drawing No. 22-1226-604 Rev P01 to serve that building has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking

and re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: To ensure that adequate parking is provided, and maintained and retained.

7. The use hereby permitted shall only be open for the preparation, sale and consumption of food and drinks between the hours of 08.00 to 18.00 Monday to Saturdays and not at any time on Sundays or Public and Bank Holidays.

Reason: To safeguard the amenities and interests of the occupants of other property in this residential area.

8. The proposal for landscaping shown on the approved plans referenced Proposed Site & Site Location Plan Drawing No. 22-1226-604 Rev P01 & Proposed Elevations Drawing No. 22-1226-605 Rev P01; shall be implemented prior to the commencement of the use;. Any plants which within 5 years of planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of visual amenity

9. No external lighting shall be installed in connection with the development hereby approved until such details have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details and maintained and retained at all times thereafter.

Reason: In the interests of visual and rural amenity.

Informative

Your attention is drawn the comments from TMBC Environmental Health Food and Safety in relation to the internal layout and in this regard the applicant/owner is advised to make contact with the Food and safety team prior to fit out - foodandsafety@tmbc.gov.uk.

To avoid undue disturbance to neighbours, during the demolition and construction phase, the hours of working (including deliveries) shall be restricted to Monday to Friday 07:30 hours - 18:30 hours. On Saturday 08:00 to 13:00 hours, with no work on Sundays or Public Holidays. Although it would not be possible at this stage under Environmental Health legislation to prohibit the disposal of waste by incineration, the use of bonfires could lead to justified complaints from local residents. The disposal of demolition waste by incineration is also contrary to Waste Management Legislation. The applicant is therefore advised to prohibit fires on site during the development stage of this project.

Contact: Susan Field