

**Hildenborough**  
Hildenborough

**556746 148692 11 March 2015**

**TM/15/00842/FL**

Proposal: Variation of conditions 6 and 7 of planning permission TM/13/02727/FL to allow for the cafe to be open until 8pm Wednesdays- Saturdays between the months of June- September, to allow for the use of the outside space by customers until 8pm Wednesdays- Saturdays between the months of June- September and to allow for use of the premises for private functions all year round (up to a maximum of 8 per month) on Tuesdays-Saturdays up until 11pm

Location: 152-154 Tonbridge Road Hildenborough Tonbridge Kent

Applicant: Dame Kelly Holmes

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**1. Description:**

- 1.1 This application seeks a variation to the hours of operation which was controlled by conditions 6 and 7 of permission TM/13/02727/FL (change of use of 152 – 154 Tonbridge Road to a restaurant and café on the ground floor and beauticians and meeting area at first floor).
- 1.2 Condition 6 of the planning permission restricted opening hours for customers to between 08.00 and 18.00 Monday to Saturday, and between 10.00 and 16.00 on Sunday.
- 1.3 Condition 7 of the planning permission requires that the use of the external seating area and rear first floor terrace to cease by 18.00 Monday to Saturday and by 16.00 on Sundays.
- 1.4 This application seeks to extend normal opening hours on Wednesdays to Saturdays, between the months of June to September, to 20.00 in both cases. This would also allow the use of the premises and outside area until 20.00 on these days during the summer months.
- 1.5 Furthermore, the application seeks to extend the use of the premises for private functions up until 11pm. It is stated that this would involve a maximum of 8 such functions per month, all year round, on Tuesdays - Saturdays.

**2. Reason for reporting to Committee:**

- 2.1 Called in by Cllr Smith given the sensitive planning history connected to this site.

**3. The Site:**

- 3.1 The site lies within the rural settlement confines of Hildenborough, within the Conservation Area. It lies on the northern side of the Tonbridge Road (B245). The buildings form part of a row of Victorian dwellings, and have been converted, renovated and extended over the past year. They are now in use as the café and beauticians, as approved by permission TM/13/02727/FL.

**4. Planning History (relevant):**

TM/13/02727/FL      Approved      18 December 2013

Change of use from residential (C3) and ground floor shop (A1) to restaurant and cafe (A3) on ground floor and beauticians and meeting area at first floor. Demolition of flat roof side and rear extension and removal of two storey rear extension. Construction of new single storey additions and alterations to front elevation

TM/14/01448/NMA      Approved      27 May 2014

Non material amendment to planning permission TM/13/02727/FL (Change of use from residential (C3) and ground floor shop (A1) to restaurant and cafe (A3) on ground floor and beauticians and meeting area at first floor. Demolition of flat roof side and rear extension and removal of two storey rear extension. Construction of new single storey additions and alterations to front elevation) being internal alterations to layout and external alterations

TM/14/02828/RD      Approved      25 September 2014

Details of screening pursuant to condition 9 of planning permission TM/13/02727/FL (Change of use from residential (C3) and ground floor shop (A1) to restaurant and cafe (A3) on ground floor and beauticians and meeting area at first floor. Demolition of flat roof side and rear extension and removal of two storey rear extension. Construction of new single storey additions and alterations to front elevation)

TM/14/03379/NMA      Approved      22 October 2014

Non material amendment, being alterations to elevations and size of external canopy

**5. Consultees:**

- 5.1 PC: No comments received to date.
- 5.2 Private Reps 100/2X/1R/0S. Objections are raised on the following grounds:
- Condition 6 was in line with Parish Council comments.
  - The venue is more than a simple café which now has an alcohol licence and licence to play music.

- No need for another venue for private functions as there are a number of existing facilities nearby.
- The parking spaces that would become free once business close are quickly filled by residents returning from work.
- Use of the business premises parking across the road would help if this arrangement is put into place prior to any grant of permission to vary hours of opening.
- Parking problems already exist with the bus stop frequently occupied by private cars which causes congestion.
- The front seating area is often used for parking.

5.2.2 Letters making no objection raised the following questions:

- Would private functions be kept inside the premises?
- Would the smoking area be kept to the front of the premises?
- Would private functions be kept to specific days?
- Would a member of staff always be present at private functions?
- Would finish times of 8pm and 11pm include clearing up time?
- If permission is granted a temporary period would be preferable.

## **6. Determining Issues:**

- 6.1 The NPPF seeks to support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. This includes supporting the growth and expansion of all types of business and enterprise in rural areas and seeks to promote the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship. Additionally, policy CP12 of the TMBCS states that (amongst others) employment development will be permitted within the confines of the defined rural settlements, which includes Hildenborough. With these policies in mind, there is no objection to the overarching principle of expanding the way in which this business operates as proposed.
- 6.2 A key cause for concern in the consideration of the original planning application for the change of use of these premises to a café was how the amenities of the surrounding residential properties might be affected. Members will recall that careful consideration was given to the approved opening hours in order to allow the applicant to commence the business in a way that would not be to the

detriment of those residential amenities. The use has now commenced and its early commercial success to date has led the applicant to consider developing it further. It is therefore necessary to consider how the expansion of the business in the way proposed would affect the amenities of the surrounding residents.

- 6.3 In this respect, paragraph 123 of the NPPF states that new planning policies and decisions should aim to:

*“Avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development.*

*Mitigate and reduce to a minimum other adverse impacts of health and quality of life arising from noise from new development, including through the use of conditions.*

- 6.4 The proposal seeks to extend the current closing time for general customers from 6pm to 8pm Wednesday to Saturday during the period from June to September. This would allow for use of both the café and outside space until 8pm at these times. It is understood that this increased closing time would be for customers and that clearing up time would follow, resulting in staff only on the premises after 8pm on these specific days.
- 6.5 The applicant also requests that the premises be available for hire for private functions throughout the year, but only on Tuesdays to Saturdays, leaving Sundays and Mondays to operate under the terms of the original planning permission. It is intended that these private functions would also be able to make use of the outside space until 8pm during June to September and 6pm during the remaining months. The applicant has indicated that such functions would be managed by the staff ensuring that would always be someone onsite responsible for the running of the event. This would also ensure a point of contact for residents should the need arise.
- 6.6 The applicant has requested permission to hold up to 8 of these private functions per month. Whilst it is not yet clear how popular this would be in practice, the applicant has indicated that allowing for a maximum of 8 would give the flexibility required. It is recognised that there are other venues locally which offer hire for private functions, however this cannot be considered a reason to refuse the opportunity for other venues to do the same.
- 6.7 Question has been raised regarding the outside area being used as a smoking point. The applicant has explained that there is no such area available at the moment meaning that the use of the outside area is purely in connection with the main function of the café. It would, therefore, not be the case that there would be any added scope for customers to use this space to smoke beyond the stipulated hours.

- 6.8 Since the café opened, the Council has received no complaints with regards to noise or disturbance which in my view indicates that it is being properly and sensitively managed. However, I understand that it has only been open since December so it is recognised that use of the outside space in particular would have been limited during the winter months. It is anticipated that this space would be more intensively used during the longer days and warmer months. During this time, it is also more likely that neighbouring residents would have their windows open more often than during recent months.
- 6.9 In terms of the extended opening hours and use of the outside space until 8pm for a few days a week during the summer, this would in my view not be unreasonable for such a business. It is accepted that the premises are in close proximity to neighbouring residential properties, however such uses are not uncommon in built up areas like this and the additional two hours would not, in my view, cause such harm to justify a refusal of planning permission. Crucially, it should be noted that there is no change proposed to the Sunday operating hours. Again, the key will be how the extended use is managed on an ongoing basis. To date, there is every suggestion that the applicant is managing the use in a positive and appropriate fashion and that this would continue.
- 6.10 The applicant has stated that in the interests of being a good neighbour to minimise any such impact on neighbouring amenities, a number of measures will be introduced to make customers aware of the need to behave in an appropriate manner. For every private function booked, the clients will be asked to sign an agreement that they will inform their guests of the need to respect neighbouring properties. Signs are also proposed to be placed at the exit to remind customers when they leave of their responsibility to be respectful to these neighbours. The staff handbook that is issued to all members of staff will include requirements that all event nights are run in a responsible manner, and there is a Challenge 21 policy for the serving of alcohol on the premises. Any member of staff under 18 is also not allowed to serve alcohol to customers. The premises are also bound, of course, by the terms of their license which affords further controls on how the use operates and is managed.
- 6.11 When considering the policy aims and the need to support a growing business alongside the need to protect the amenities of neighbouring properties, I consider that, on balance, the extended hours sought by this application are reasonable. I am also of the view that the request to hire the café out for private functions up to 8 times a month can be acceptable if appropriately controlled by way of responsible management and acceptable opening hours. The applicant should be mindful of the fact that planning conditions also afforded control over the type of food that could be cooked and served within the premises and it is important to note that there is no indication that these are to change as a result of the extension of operating hours proposed.

- 6.12 I appreciate that the use has not been operating for a significant length of time, and has not yet been open during the summer when the potential for conflict between the café use and residential amenity could be increased. The NPPG advocates the use of temporary planning permissions where a 'trial run' is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period.
- 6.13 With this in mind, I consider it to be reasonable in these circumstances to grant permission for the variation of the conditions on a temporary basis for 12 months. This would allow for the monitoring of the extended use and hours whilst also allowing the applicant to establish what the real level of demand for such extended facilities might be. I would also suggest that the applicant be required to keep a log book detailing all events and private functions to provide a detailed depiction of the nature of this aspect of the use. Again, I would suggest that this be required by planning condition. With such a mechanism in place, should any complaints be received, Officers will be able to refer to the log book to understand what problems may have occurred and prompt the applicant to introduce measures to ensure there is no reoccurrence. This will also be an important tool in reassessing any further applications following the 12 month temporary period.
- 6.14 I recognise that the other key concern at the time of the original planning application for the change of use centred on the lack of parking available on site and the potential impact upon the local highway network. Indeed, the concerns raised by the two representations to date in connection with this application also largely relate to parking implications. I understand that discussions are in place with the business on the opposite side of the B245 regarding the possibility of that extensive car park being used by those attending private events/functions in the future should planning permission be granted. This is clearly a very positive conversation, which should be welcomed but I must stress that the conditions now sought to be varied were not imposed for any highway reason. They were imposed in order to control the use of the premises in the interests of residential amenity. It would, therefore, be unreasonable to resist the variation of the conditions on highway safety grounds now. Furthermore, it would not be possible to *require* the use of the nearby car parks in the way described by the applicant given that this land is outside of their control. Instead, the ongoing discussions described within the submission should be viewed as a gesture of good intent on the part of the applicant, and certainly an added bonus should those discussions prove to be fruitful.
- 6.15 In terms of the private events/functions potentially increasing traffic movements to the site, beyond that already established by the café use, I would suggest that a further condition be imposed requiring a travel plan to be submitted detailing how clients will be specifically advised on the circumstances of the site and the constraints of the local highway network. Although at this time I am only recommending permission be granted on a temporary basis, I do not consider the

requirement for a travel plan to be unreasonable in the specific circumstances, and given the information already provided by the applicant, this would not be an onerous requirement.

6.16 In light of the above considerations, the following recommendation is put forward:

**7. Recommendation:**

7.1 **Grant Planning Permission** in accordance with the following submitted details: Supporting information statement dated 11.03.2015, email dated 19.03.15, email dated 25.03.15 subject to the following Draft Conditions (final wordings to be agreed with Director of Central Services):

**Conditions:**

1 The development hereby permitted shall cease on or before 30 April 2016.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

2 The uses hereby approved shall be operated fully in accordance with plan number 13/1779/100 C and the Supporting Statement prepared by MKA Architects received on 08 November 2013 approved under planning reference TM/13/02727/FL unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of residential amenity and highway safety.

3 The uses at ground and first floor level hereby permitted shall be limited only to that applied for and specified in the Supporting Statement prepared by MKA Architects received on 08 November 2013 approved under planning reference TM/13/02727/FL, with the ground floor café only serving the items specified within that Supporting Statement unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of residential amenity.

4 There shall be no more than a total of 100 café customers or private event attendees on site at any time during any working day.

Reason: In the interests of residential amenity.

5 The business shall not be carried on, and the premises shall not be open to customers, outside the hours of 08:00 to 18:00 Monday to Saturday (extended until 20:00 Wednesday to Saturday between the months of June and September) and 10:00 to 16:00 on Sunday unless otherwise agreed by the Local Planning Authority.

Reason: In the interests of residential amenity.

6 External seating shall be limited only to the areas identified on plan number 13/1779/100 C approved under planning reference TM/13/02727/FL. The use of these areas shall cease by 18:00 hours Monday to Saturday (extended until 20:00 Wednesday to Saturday between the months of June and September) and 16:00 hours on Sundays with all customers vacating these areas by the relevant time on each day. The tables and chairs in the external seating areas shall be rendered unavailable for use in these areas from the above times on each day.

7 The use of the rear first floor terrace shall cease by 18:00 hours Monday to Saturday and 16:00 hours on Sundays with all customers vacating these areas by the relevant time on each day. The tables and chairs in the external seating areas shall be rendered unavailable for use in these areas from the above times on each day.

Reason: In the interests of residential amenity.

8 No external lighting shall be installed in connection with the building 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.

Reason: To ensure that the development does not harm the character and visual amenity of this rural locality.

9 The privacy screen enclosing the first floor terrace shall be retained at all times unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of amenity and privacy of adjoining property.

10 The use of the premises for private events and functions shall not commence until a Travel Plan covering all staff and attendees has been submitted to the Local Planning Authority for formal approval. Thereafter, the Travel Plan shall be implemented and monitored to ensure strict compliance with the approved scheme.

Reason: In the interests of highway safety.

11 The cycle storage area approved under planning reference TM/13/02727/FL shall be kept available for the storage of cycles at all times.

Reason: In the interests of highway safety.

12 The designated bin storage area approved under planning reference TM/13/02727/FL shall be kept available for the storage of refuse bins and recycling boxes at all times.

Reason: In the interests of visual and residential amenity



- 13 No amplified music/speech shall be played within the garden or on the terrace and any music played within the building shall be inaudible outside of the building.

Reason: To protect the aural environment of nearby dwellings and in the interests of residential amenity.

- 14 No seating shall be placed on and no food or drink shall be consumed from the first floor terrace hereby approved at any time.

Reason: In the interests of residential amenity.

- 15 No children's play equipment of any type, whether or not requiring planning permission, shall be installed or placed at any point within the rear garden, at any time, without the formal written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- 16 The building shall be used for no more than 8 pre-booked events and functions within any one calendar month and for no more than one pre-booked event or function on any given day. The use of the premises for pre-booked events and functions shall not operate outside the hours of 08:00 to 23:00 Tuesday to Saturday unless otherwise agreed by the Local Planning Authority.

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

- 17 A log book of all pre-booked events and functions, including any noise incidents and measures for future mitigation shall be maintained at the premises, which shall be made available for inspection by the Local Planning Authority.

Reason: To ensure the use proper management of the restaurant use of the premises in order to safeguard the amenities of neighbouring occupiers.

- 18 Within two months of the grant of this permission a list of pre-booked events and functions for the period covered by this permission shall be provided to the Local Planning Authority. Any bookings taken following the submission of the list shall be notified to the Local Planning Authority as soon as they are confirmed.

Reason: To allow the proposed extended operating hours to be monitored during the specified period.

**Informative:**

- 1 The applicant is asked to ensure that access to 150 Tonbridge Road is not obstructed at any time and to ensure customers are suitably aware of the shared nature of the access when entering the premises. The applicant is encouraged to discuss with the occupiers of 150 how the space between the two buildings is best managed to ensure that the private right of way is maintained.

Contact: Holly Pitcher