



Delegated Report

Variation of Condition Application

Application No:	20221254
Location:	I Love Pizza Ltd, 147 Parrock Street, Gravesend, Kent, DA12 1EY
Description:	**REVISED DESCRIPTION** Application for the variation of conditions 2, 5 and 6 attached to planning permission ref. no. 20200615 for change of use from former Use Class A1(shops), now within Class E (Commercial, Business and Service) to what was Use Class A5 (hot food takeaway), now a Sui Generis Use (Hot Food Takeaway), to allow changes to the approved drawings; changes the front signage display; changes to the odour extraction and ventilation systems; and change of use from pizza takeaway.
Applicant:	Mr Yusuf Samet Aydin
Site Visit:	26 th January 2023 / 23 rd February 2023

Procedural Matters

The planning approval for the site included a condition (5) relating to the odour extraction / ventilation system details submitted with that application (ref. 20200615). This condition would be superseded by the new details in the supporting documents for this variation application, as such the agent was contacted and agreed to proceed with the revised description below:

Application for the variation of conditions 2, 5 and 6 attached to planning permission ref. no. 20200615 for change of use from former Use Class A1(shops), now within Class E (Commercial, Business and Service) to what was Use Class A5 (hot food takeaway), now a Sui Generis Use (Hot Food Takeaway), to allow changes to the approved drawings; changes the front signage display; changes to the odour extraction and ventilation systems; and change of use from pizza takeaway.

Submitted Documents/Plans

- Application Form - dated 04/01/2022;
- Covering Letter - dated 11/11/2022;
- Design and Access Statement - dated 11/11/2022;
- Supplementary Information - Filtration Assessment (GOYA Works) - dated 15/11/2022;
- Supplementary Information - Odour Report (GOYA Works) - dated 15/11/2022;
- Supplementary Information - Ventilation Statement (GOYA Works) - dated 15/11/2022;
- Supplementary Information - Vibration Assessment and Kits (GOYA Works) - dated 17/11/2022;
- Supplementary Information - Noise Impact Assessment Report (GOYA Works) - dated 17/11/2022;
- Supplementary Information - Email from Agent (24/02/2023) - confirming opening hours 11:00-23:00hrs;
- Drawing no. 060100 - Existing Floor Plans;
- Drawing no. 060101 - Proposed Floor Plans;
- Drawing no. 060102 - Retrospective and Proposed Elevations and Proposed Section BB;

- Drawing no. 060103 - Existing Elevations and Section BB;
- Drawing no. 060105 - Retrospective Front Elevation and Section BB;
- Drawing no. 060106 - Proposed Basement and Ground Floor Kitchen Equipment Plan;
- Drawing no. 060107 - Fixing Details Plan;
- Drawing no. 2022/33/01 - Site Location and Block Plans;
- Un-numbered Block Plan (scale 1:200).

Relevant Planning History

Reference	Description	Decision	Decision Date
20220843	Application for the variation of condition 2 and 6 attached to planning permission ref. no. 20200615 for change of use from former Use Class A1 (shops), now within Class E (Commercial, Business and Service) to what was Use Class A5 (hot food takeaway), now a Sui Generis Use (Hot Food Takeaway); and changes to the front signage display; to allow the use to change from pizza takeaway and associated products to takeaway, and drawings and details added to condition 2.	REFUSED	06.10.2022
20200615	Application for change of use from formerly Use Class A1 (shops), now within Class E (Commercial, Business and Service) to what was Use Class A5 (hot food takeaway), now a Sui Generis Use (Hot Food Takeaway); and changes to the front signage display.	PERMITTED	11.09.2020

Development Plan

Gravesham Local Plan Core Strategy (September 2014):

- CS01 - Sustainable Development
- CS02 - Scale & Distribution of Development
- CS05 - Gravesend Town Centre Opportunity Area
- CS07 - Economy, Employment and Skills
- CS11 - Transport
- CS18 - Climate Change
- CS19 - Development & Design Principles

Gravesham Local Plan: First Review (1994)

- P3 - Vehicle Parking Standards
- S7 - Hot Food Shops and Restaurants

Paragraph 33 of the NPPF (2021) sets out that policies within adopted local plans should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Such reviews are also a legal requirement as set out in Regulation 10A of the Town and Country Planning (Local Planning) England Regulations 2012.

The Council undertook such a review in September 2019 and found that the adopted Local Plan Core Strategy is in need of a partial review in terms of Policy CS02, due to the increased need for housing since the Local Plan Core Strategy was adopted and the need to ensure that a sufficient land supply exists to meet this need. Whilst saved policies from the Local Plan 1st Review (1994) generally conform with the NPPF (2021), the Council will also seek to replace these.

National Planning Policy Framework (2021)

- Section 2 - Achieving Sustainable Development
- Section 6 - Building a Strong, Competitive Economy
- Section 7 - Ensuring the Vitality of Town Centres
- Section 12 - Achieving Well-Designed Places

Supplementary Planning Guidance

- SPG 4 - KCC Parking Standards (2006)

Consultations, Publicity and Representations

Internal Consultees

GBC Environmental Protection (Regulatory Services) - The application details have been reviewed and in addition a site meeting with the agent and applicant took place in order to clarify the situation and discuss a number of concerns. Although a town centre location and opposite a car park, at night-time, the area is relatively quiet. Residential premises exist above most of the shops etc in this parade and as such there is the potential for noise and odour to impact on the residents unless it is carefully controlled.

This was the concern with the previous application (20200615), hence the conditions that were applied to limit hours of use, type of cooking and a suitable kitchen extract system.

- Odour Control - This application looks to change the type of food being cooked to one that requires more odour control and needs to address a higher grease loading than the 'Pizza' use previously permitted. As a result, an upgraded extract system will be required.

An 'Odour Report' has been submitted but unfortunately it refers to an out-of-date version of the relevant guidance. The current guidance that should be used is the 'Control of Odour and Noise from Commercial Kitchen Exhaust Systems' (NETCEN 2018) which updates the earlier Defra guidance. There are a few errors/discrepancies in the report submitted as the earlier version of the guidance has been used. However, I will not be requiring an updated report to be submitted. Having worked through the odour risk assessment using the updated/current guidance, although the final odour score is higher at 31, as opposed to the score of 23 in Goya Works' 'Odour Report', this still falls within the boundary of 'High level' for odour control (20 to 35). In this respect, the extract system has been designed with the correct level of odour control in place.

It is recommended that an appropriate condition is placed on any permission that requires the levels of odour control specified to be installed and in addition, maintained in accordance with the submitted details.

- Noise from Kitchen Extract - A Noise Impact Assessment has been submitted which calculates the predicted noise at the nearest noise sensitive premises which is deemed to be the flat above 147. It is understood that this is in the same ownership as the proposed takeaway, so it would have been more sensible to have calculated the noise levels at the nearest 'independent' premises which would be 146 Parrock Street. It is understood that the extract system currently in place is to be moved closer to 146, but no mention of the distance from the windows of this property has been made in the report.

The proposed system is robust with silencers, an acoustic fan jacket and is to be fixed with anti-vibrational mounts. The report calculates that the noise levels will be 10dB(A) below background noise levels in accordance with our requirements. It is however noted that no penalties have been applied for tonality etc under the BS4142:20104 calculation which could alter the result.

A number of neighbour representations have been made regarding noise. In this instance, as there are a number of residential premises in close proximity, it would be prudent to place a post completion test condition on any permission in order to validate the noise levels are 10dB(A) below background. This should be undertaken at the nearest 'independent' noise sensitive premises. Should the noise levels not

achieve the required levels, further noise attenuation will be needed before the use commences.

- Opening Hours - The applicant has indicated that he is happy with a 23:00 hours close time as opposed to the later times indicated in the application details. This is a more sensible time in this location, and it is suggested that a condition is placed on any permission specifying this closing time.

In order to deal with the above, the following conditions are recommended:

- Kitchen Extraction System (Odour) - The kitchen extraction/ventilation system shall be installed as set out within the 'Odour Report' dated 15/11/2022 by Goya Works, 'Ventilation Statement' dated 15/11/2022 by Goya Works and the proposed plans before the use as hereby permitted first commences. The extraction/ventilation system as installed must not be used outside the permitted operating hours of the premises. The system shall be maintained in accordance with the submitted reports and documents thereafter.

The installation and commissioning of the extract system must be undertaken using a competent ventilation engineer in accordance with approved details. A commissioning report is to be provided to the Local Planning Authority to verify the installation and ensure minimum discharge rates are included. The extraction and odour/fume control equipment shall be maintained and operated in compliance with the approved scheme. After installation of the approved plant, no new plant or ducting system shall be used without the written consent of the Local Planning Authority

- Kitchen Extraction System (Noise) - The kitchen extraction/ventilation system shall be installed in accordance with the details and specification as set out within the 'Noise Impact Assessment Report – Kitchen Extract System' dated 17/11/2022 by Sound Licensing Ltd, 'Ventilation Statement' dated 15/11/2022 by Goya Works, 'Vibration Assessment and Kits' dated 17/11/2022 by Goya Works and the proposed plans before the use as hereby permitted first commences.

The installation and commissioning of the extract system must be undertaken using a competent ventilation engineer in accordance with approved details. A commissioning report is to be provided to the Local Planning Authority to verify the installation. This report must include post completion noise levels taken at the nearest independent noise sensitive premises in order to demonstrate that the rating level of the noise emitted as a result of the extraction equipment running does not exceed the existing background noise level by more than -10dB at the nearest independent noise sensitive premises when measured and assessed in accordance with BS4142:2014. If this level cannot be complied with, a scheme of further noise mitigation measures needed to achieve the required level must be submitted for approval.

After installation of the approved plant, no new plant or ducting system shall be used without the written consent of the Local Planning Authority

- Opening Hours - The premises shall only be open for trading as a hot food takeaway, and any associated home delivery service shall also only operate, between the hours of 11:00 hours and 23:00 hours on any day.

GBC Highway Officer - I have no objections, the use of the property as a hot food takeaway has already been established.

Local Ward Councillors - No comment received.

Neighbouring properties

A notice was displayed on site 18th January 2023.

In addition, six surrounding properties were consulted and thirteen representations were received. There were three objections and ten registering support for the development. These have been summarised below:

Note - The objections have been separated into material and non-material planning considerations. Please note only the material planning considerations are relevant to this decision.

Objections

Material Planning Considerations:

- Odour issues - would be increased by frying food
- Heat from extractors
- Noise
- The above impacts affect inside homes and gardens
- Impact on ventilation of properties - to avoid noise and odour from cooking
- Filters unlikely to be changed regularly and will not work as they should
- Issues reported previously to GBC Environmental Health
- Using legacy data for noise assessment from a neighbouring properties report commissioned in 2021

Non-Material Planning Considerations:

- Appellants personal circumstance

Support

- Great fit for the area
- Move variety of food options
- Healthier alternative to other fast-food restaurants
- Looking forward to opening

The consultation period expired 10th February 2023.

Preliminary Matters

This application follows a similar application that was refused by the Local Planning Authority (ref. 20220843). The refused application proposed the variation of condition(s) 2 and 6 attached to planning permission ref. 20200615, and was refused for the following reasons:

1. *The proposal fails to provide sufficient evidence to ensure that neighbour amenity has been safeguarded in terms of noise impact and odour emissions regarding the new form of takeaway cooking and associated noise from the newly installed ventilation extraction system. As such the proposal is contrary to Policy CS19 of the Gravesham Local Plan Core Strategy (2014) and paragraph 130 (f) of the National Planning Policy Framework (2021).*

In order to receive a favourable decision, this proposal must be considered to overcome the reasons for refusal attached to the previous application.

Officer's Analysis

147 Parrock Street is a two storey building in mixed use, with residential units on the upper floors and a Sui Generis hot food takeaway on the ground floor and basement levels.



Planning permission was granted for 'Application for change of use from formerly Use Class A1 (shops), now within Class E (Commercial, Business and Service) to what was Use Class A5 (hot food takeaway), now a Sui Generis Use (Hot Food Takeaway); and changes to the front signage display' on 11.09.2020 under ref. 20200615.

This was subject to a number of conditions including conditions 6, which stated:

6. *The premises shall only be used as a hot food takeaway for the cooking and sale of pizza and products ordinarily associated with mainstream pizza takeaway menus and for no other take-away use.*

Given this condition planning permission is required for any other type of takeaway cooking. The pizza takeaway which was operating has closed down and the applicant now seeks to open a Turkish cuisine takeaway; a new extraction ventilation system has already been installed. At the time of the site visit the premises had a new fascia sign installed stating 'The Authentic Turkish Kitchen' and a sign in the window saying, 'coming soon'.

Further to condition 6 restricting the use of the shop, there were other conditions attached to ref. 20200615 that would need variation if the proposed development considered to be in accordance with planning policy. The other conditions related to the approved plans/drawings and the odour extraction and ventilation unit:

2. *The development hereby permitted shall be carried out in strict accordance with the following approved plans/drawings;*
 - *Application Form dated 09/07/2020*
 - *Drawing Number; PS-MAC-20-09-P02 Existing Ground Floor, Proposed Ground Floor, Existing and Proposed Elevations*
 - *Planning Statement*
 - *Noise Impact Assessment Report Reference number VA3240.200618.NIA dated 18th June 2020, by Venta Acoustics*
5. *The odour extraction/ventilation system shall be installed as set out within the Noise Impact Assessment, ref. VA3240.200618.NIA by Venta Acoustics dated 18-06-20 and Planning Statement dated 29-06-20 from Planning Direct, ref. 0609-SB, before the use as hereby permitted first commences. The odour extraction/ventilation system as installed must not be used outside the permitted operating hours of the premises. The system shall be maintained fully effective thereafter.*

The principle consideration in the assessment of the planning application is the impact on neighbouring

properties; also the impact on the character and appearance of the building and area, as well as any parking or highway issues.

Neighbouring Amenity

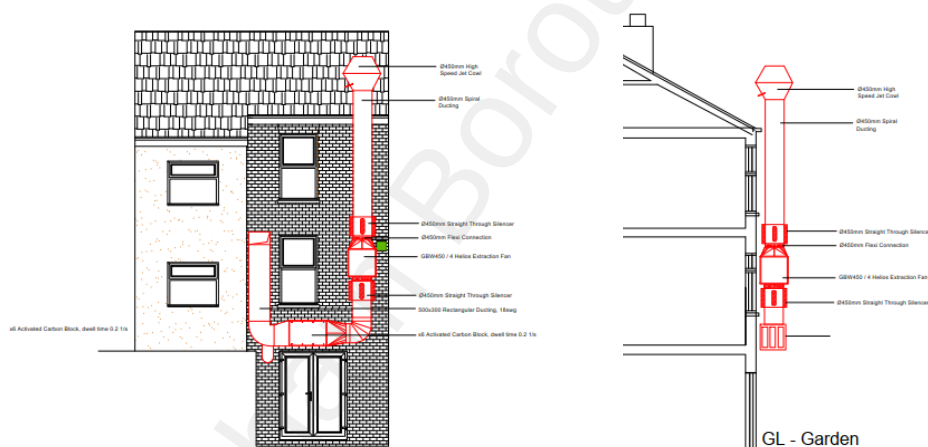
Policy CS19 (LPCS) seeks to protect amenity and ensure acceptable future living conditions. The NPPF also assists and seeks to ensure developments will function well, do not undermine quality of life and create attractive and comfortable places to live, work and visit and seeks to “secure high-quality design and a good standard of amenity for all existing and future occupants of land and buildings”.

The site was granted planning permission for a hot food takeaway but was restricted in condition (6) for use only as a pizza takeaway, to reduce the potential adverse odour impacts on the amenity of surrounding residents. As such, the potential impact on neighbour amenity is a key consideration in this application.

Odours

The proposed hot food takeaway restaurant would be preparing Turkish cuisine, which would be different to the baked goods prepared in the pizza takeaway (ref. 20200615). As such, there would be different odours and odour levels produced by the new use, which is a concern raised by neighbouring residents in their objections.

The plans demonstrate that an upgraded ventilation system would be installed on the rear of the building, with the flue being repositioned to the north.



In addition, the application has been supported by an odour report, along with a filtration assessment and ventilation statement.

Gravesham's Environmental Protection Team (Regulatory Services) have reviewed the plans and supporting documents, providing the following considerations:

“An ‘Odour Report’ has been submitted but unfortunately it refers to an out-of-date version of the relevant guidance. The current guidance that should be used is the ‘Control of Odour and Noise from Commercial Kitchen Exhaust Systems’ (NETCEN 2018) which updates the earlier Defra guidance. There are a few errors/discrepancies in the report submitted as the earlier version of the guidance has been used. However, I will not be requiring an updated report to be submitted. Having worked through the odour risk assessment using the updated/current guidance, although the final odour score is higher at 31, as opposed to the score of 23 in Goya Works’ ‘Odour Report’, this still falls within the boundary of ‘High level’ for odour control (20 to 35). In this respect, the extract system has been designed with the correct level of odour control in place.

It is recommended that an appropriate condition is placed on any permission that requires the levels of odour control specified to be installed and in addition, maintained in accordance with the submitted details.”

Therefore, subject to conditions, the proposed odour extraction, filtration and ventilation would be acceptable and safeguard the amenity of surrounding residents.

Noise

The noise generated by the new use and associated odour control measures could impact on the amenity of surrounding residents, and were raised as concerns in representations received.

The application has been supported by a noise impact assessment and vibration assessment report. Gravesham's Environmental Protection Team (Regulatory Services) have reviewed the supporting documents, providing the following considerations:

"A Noise Impact Assessment has been submitted which calculates the predicted noise at the nearest noise sensitive premises which is deemed to be the flat above 147. It is understood that this is in the same ownership as the proposed takeaway, so it would have been more sensible to have calculated the noise levels at the nearest 'independent' premises which would be 146 Parrock Street. It is understood that the extract system currently in place is to be moved closer to 146, but no mention of the distance from the windows of this property has been made in the report.

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Therefore, subject to conditions, the proposed noise control measures would be acceptable and safeguard the amenity of surrounding residents.

Hours of Use

The noise impact assessment (dated 17/11/2022) states that the intended opening hours would be 10:00-00:00hrs Monday to Friday; 10:00-01:00hrs Saturday; and 10:00-23:00hrs on Sundays. However, these hours are considered to be unacceptable creating disturbance at unsociable hours for surrounding residents.

It has been confirmed by email with the agent (received 23/02/2023) that the opening hours would be 11:00-23:00hrs Monday to Sunday, which is the same as the hours conditioned in planning permission ref. 20200615. Therefore, condition 3 will be retained and will control the opening hours that are considered to limit disturbance to surrounding residents.

Summary of Amenity

The proposed extraction system and noise reduction measures have been considered acceptable by GBC Environmental Protection and will be conditioned to ensure that amenity is safeguarded. Moreover, the opening hours have been confirmed and are considered acceptable for the edge of town centre location. Overall, the proposed change of use to a Turkish Restaurant is considered to safeguard the amenity of surrounding residents, subject to planning considerations, to be in accordance with Policy CS19 (LPCS) and measures have been taken to ensure expressed neighbour concerns are adequately addressed.

Other Matters

Design, Character and Appearance

The proposed ventilation extraction system is not visually attractive. However it is located to the rear of the property and is not visible from public vantage points by virtue of the layout of surrounding buildings. Nevertheless, a condition will be attached to the decision notice to ensure that the external flue is painted black to reduce the starkness of the metal material.

Therefore, subject to conditions, the proposal is not considered to impact on the character or appearance of the street scene and is in accordance with Policy CS19 (LPCS).

Parking and Highways

Policy CS11 (Transport) (LPCS) seeks to ensure that new developments mitigate their impact on the highway and provide sufficient parking in accordance with adopted parking standards. The Highway's Officer has raised no objection to the proposal and there are not considered to be any parking or highways issues.

Suggested Conditions

All previous conditions attached to planning permission ref. 20200615 will be attached to this permission. However, the following conditions will be changed:

- Time Limit
- Approved Plans
- Odour Extraction / Ventilation System

Furthermore, an additional condition will be attached to the decision notice relating to Noise.

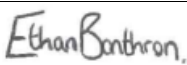
Conclusion

Taking all the above into account, it is considered the proposal given its scale would be unlikely to result in a material increase in noise and disturbance to local residents, or give rise to significant material harm to the amenity of surrounding area. Therefore, the proposal is considered to have addressed the ground of refusal attached to the previous application (ref. 20220843) and is in accordance with Policy CS19 of the Local Plan Core Strategy (2014), Section 12 of the National Planning Policy Framework (2021) as well as saved policy S7 of the Gravesham Local Plan First Review (1994), which together requires development to safeguard amenity of neighbouring property. This application has provided sufficient information to overcome the previous ground of refusal.

Recommendation

Permission - subject to conditions

(For detailed conditions and informatives, see draft Decision)

Case Officer:	Mr Ethan Bonthron	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	27 th February 2023	Dated:	28 February 2023