



Delegated Report

Planning Application

Application no:	20210876
Location:	21 Darnley Road Gravesend Kent DA11 0RZ
Description:	Application for change of use from retail premises Class E(a) to a burger restaurant with ancillary takeaway Class E(b) and associated changes including an extraction fan to rear.
Applicant:	Mr U Aslam
Site Visit Date:	Desktop Assessment

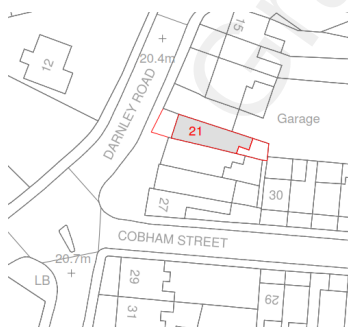
Submitted Documents/Plans

Planning Application Form;
Design and Access Statement;
Heritage Statement;
Drawing No. 21DR E01 – Plan and Elevation As Existing;
Drawing No. 21DR SITE – Site Location Plan As Existing Block Plan As Proposed; and
Drawing No. 21DR P01 – Plan and Elevation As Proposed.

Site Description

The application site is situated located just out of Gravesend Town Centre and within the Darnley Road Conservation Area. The application site fronts a Local Distributor road of the highway network and situated south of Gravesend Station and the affiliated railway line.

The site is an existing gaming shop adjacent to an existing hot food takeaway and south of the application site comprises a short row of commercial units including a shop and a professional services unit. Directly north of the site is a Lewis Solomon Funeral Service/Funeral Home which has a garage and a driveway directly north of the flank wall of the application site. The block plan below illustrates the location of the site.



Proposed Development

As noted above, the application site was previously used as a gaming shop and the application seeks a change of use from retail premises Class E(a) to a burger restaurant Class E(b) with ancillary takeaway provisions on site and associated additions including an extraction fan to rear.

Relevant Planning History

Application Ref. No.	Description	Status	Date
20100844	Change of use of ground floor from A1 retail to D1 chiropody surgery.	Permission	04.11.2010
20020832	Change of use of ground floor from A1 retail to A3 restaurant use and installation of a extraction flue at the rear.	Refused	10.12.2002
20020509	Change of use of ground floor shop with jewellery workshop into a restaurant with ancillary hot food take-away.	Refused	14.08.2002
19900064	Installation of new shop front.	Permission	14.02.1990
19890790	Installation of new shop front, internal alteration and single storey rear extension to form workshop, change of use of first floor from residential to staff accommodation.	Permission	17.11.1989

Development Plan

Gravesham Local Plan Core Strategy (September 2014):

The site is shown as being within an urban area of Gravesend and just outside the Gravesend **town centre opportunity area** (Policy CS05), it is within a **conservation area** (Policy CS20) and fronts on to a **local distributor route** in the highway network.

- CS01 – Sustainable Development
- CS05 – Gravesend Town Centre Opportunity Area
- CS08 – Retail, Leisure and Hierarchy of Centres
- CS11 – Transport
- CS18 – Climate Change
- CS19 - Development & Design Principles
- CS20 – Heritage and the Historic Environment

Gravesham Local Plan: First Review (1994)

- P5 – Exceptions to the Vehicle Parking Standards – Change of Use of Buildings
- S7 – Policy for Hot Food Shops and Restaurants and other A3 uses
- T1 – Impact on Highway Network.
- T3 – Commercial Traffic
- TC3 – Development Affecting Conservation Areas

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)

- 2 – Achieving sustainable development
- 4 – Decision making
- 7 – Ensuring the vitality of town centres
- 9 – Promoting sustainable transport
- 12 – Achieving sustainable development and well-designed places
- 16 – Conserving and enhancing the historic environment

Supplementary Planning Guidance

- SPG 4 - KCC Parking Standards (2006)
- Darnley Road Conservation Area Appraisal (2009)
- Management Plan (19th Century Suburban Conservations Areas)

Section 72(1) of the Planning Listed Building and Conservation Areas Act 1990 (as amended) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

Consultations, Publicity and Representations

GBC - Environmental Protection Team (Regulatory Services)

We have no objection subject to the following comments. If permission is given, we would ask that the following conditions be applied:

Noise

Before the development hereby permitted is first brought into use, a post installation BS4142:2014 assessment shall be carried out and submitted to the Local Planning Authority for approval, for the approved extraction system, to demonstrate impact on the nearest Noise Sensitive Receptors. Any works identified as required to ensure the rating noise is at least 5dB below the LA90 background noise shall be carried out prior to the first commercial use of the extraction system.

Code of Practice

Please apply

Odour/Fumes

We are also concerned about the potential for a nuisance to be caused by the odour arising from the proposed use. In order to be satisfied that it would be unlikely to cause a nuisance, details of the ventilation extraction system, particularly regarding odour elimination abilities and residence time of the air within the filters should be submitted to and approved, in writing by the Local Planning Authority, prior to determination or commencement. The approved scheme shall then be installed prior to operation in accordance with the approved details.

Smoke Control Informative:

Hours of work of construction site plant, equipment and machinery, should be restricted to not earlier than 7.00 a.m. and not later than 6.00 p.m. weekdays and Saturday working should be restricted to not earlier than 8.00a.m. and not later than 1.00 p.m. No work shall be carried out on Sundays, Bank or Public Holidays.

GBC – Highways Officer

I note Kent County Council's response of the 12th October 2021 but my views are as follows.

These proposals are always difficult to assess. As a restaurant there would be little reason to object, as customers would be long stay and as such have to find a suitable location to park any vehicle which would be little different to the current usage and Rathmore Road car park is not far away, whilst the surrounding streets are subject to some form of parking controls, at least during the day.

It is the takeaway element that is of concern, and I accept such a use already in the neighbouring property, but they offer a free delivery service on orders above a £10, or at least they did in December 2020 when Google Street View last visited the area.

Whilst I accept that there are double yellow lines outside the property which should deter on street parking, when the visit is brief this often doesn't deter people from parking on them as the risk of being fined is minimal, this can have an adverse impact on passing traffic particularly so close to a traffic signal controlled junction. The kerb face is also low which would encourage pavement parking to the detriment of pedestrians, particularly those with visual impairments, not just the blind. The problem of on street parking is confounded by the fact that there does not appear to be a loading restriction outside the property. My understanding is technically, if there is no exchange of money, by whatever means, payment having been done in advance, the collection of food would be a loading operation and so waiting restrictions do not apply, providing only the food already paid for was collected, whatever the wait. (Although I don't have the details, I remember a case many years ago when a lady was collecting a clock from a shop and parked on yellow lines in Windsor, she was fined but when it went to independent appeal the fine was quashed as she was loading and not carry out a financial transaction).

So in my opinion whilst a restaurant is acceptable I have concerns about the takeaway element. In such cases my usual approach would be for the two uses to be separate planning applications, so a permanent permission can be granted for the restaurant, whilst the takeaway is either refused or a temporary permission is granted so any impacts can be monitored and as the restaurant exists there should be no significant costs in establishing the takeaway.

KCC - Highways & Transportation

I refer to the above planning application and having considered the development proposals and the effect on the highway network, raise no objection on behalf of the local highway authority.

Recommends if approval is granted standard KCC informative is included

*KCC Highways & Transportation provided duplicate comments on 12th and 29th October 2021 with the only difference being the wording of the informative.

Officer's Analysis

Appropriateness of the development in principle

The application site is a retail unit, located just out of Gravesend Town Centre and within the Darnley Road Conservation Area (as identified on the Gravesham Local Plan Core Strategy Policies Map September 2014), which is proposed to be converted into a restaurant with ancillary takeaway. As such, Policies CS08 and CS20 (LPCS) and Saved Policy S7 (LPFR) are relevant.

Policy CS08 (LPCS) relates to retail, leisure and the hierarchy of centres, and in particular seeks to protect and enhance local centres by safeguarding the retail character and function of such centres by resisting development that would adversely affect their vitality and viability and encouraging a mix of units. Saved Policy S7 (LPFR) provides criteria by which changes of use of retail units to Class A3 (now Class E(b)) uses will be determined. It states that they should not cluster to create a dead frontage; they should not be detrimental to residential amenity; that adequate parking should be available and that ventilation equipment should be discreetly located.

The area surrounding the application site is a mix of residential and commercial in nature with three shops located to the south within the same terrace, consisting of a takeaway, convenience store and legal services. Residential properties are located at upper levels in most adjoining properties. The application site is currently vacant but was previously used as a computer gaming shop, with some 27.59 square metres of retail floor space, together with a further 26.65 square metres to the rear with toilet and kitchen areas. There is a secondary access at the front into a hall and stairway to the first floor level, which is used for residential use.

The existing use of the ground floor is commercial Class E(a). The proposal is for the change of use from

the existing Class E(a) (Display or retail sale of goods, other than hot food)(former Class A1) to Class E(b) (former Class A3) (Sale of food and drink for consumption (mostly) on the premises) with ancillary hot food takeaway provisions (sui generis use class). From 1st September 2020 Classes A3 and A5 were merged into uses Class E and Sui Generis respectively. Therefore, the existing use and the proposed use primarily falls within the same use class (Class E) although the ancillary part of the application for hot food takeaways falls outside of use Class E.

It is noted that Part A of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 (as amended) now includes Class E (Commercial, Business and Service use) which includes shops (formerly A1 use) and that, by virtue of Section 55(2) of the Town and Country Planning Act 1990 (as amended), a change in the primary use of land or buildings where the before and after use falls within the same use class, is work that does not amount to development. As such the proposed conversion alone would not require planning permission.

Furthermore, the supporting planning application form states that the number of existing and proposed employees would remain the same.

Notwithstanding the hot food takeaways element of the application, the proposed change of use to a restaurant with ancillary hot food takeaway provisions is considered to be acceptable in principle. The following paragraphs will now consider the detailed impacts of the proposal.

Design, Character and Heritage

The proposed extraction flue would be located on the rear elevation of the building and would be set below the building ridge line. Given how the application site is situated within the row of terraced properties, it is considered that proposed flue would have minimal visibility of the rear wall from Cobham Street. It is therefore considered that it would not be significantly detrimental to the visual amenities of the surrounding area or would it have a detrimental impact on the Darnley Road Conservation Area (CA).

In order to accommodate the nature of the new business at the application site, changes to the façade are proposed which could have implications to the Darnley Road CA. Both a Heritage Statement (HS) and a Design and Access Statement (DAS) has been supplied to support the design rationale to the frontage of the site along Darnley Road. The HS supplied, to some degree, acknowledges the significance of the site being within the CA and concludes the following;

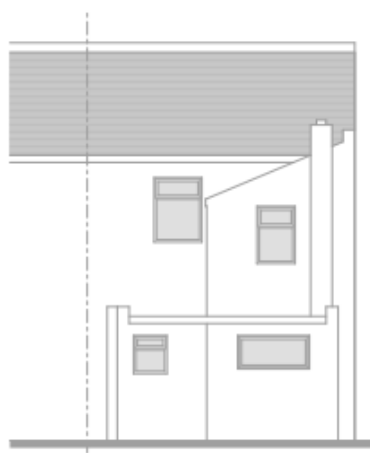
'Externally the property has very little architectural interest other than front facade which features brick work and finely detailed brick arch arches over the external openings...The proposals will not adversely affect the property, the front exterior brick work and other architectural detailing in anyway...Furthermore it is considered the proposal will improve the longevity of the property and its continued use as a viable businesses premises to ensure the parade remains open and a feature within the street scene as intended.'

Similarly, the DAS supplied maintains;

'(the proposed development) would smarten up the appearance of this part of the street, which lies within the Darnley Street Conservation Area and make the entrance to property more attractive and inviting to potential customers thus preserving its commercial use in keeping with the existing parade of shop'



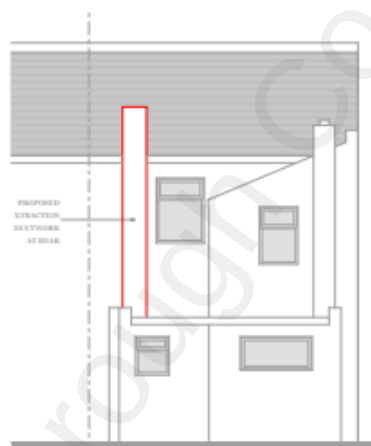
FRONT ELEVATION AS EXISTING @ 1 : 50



REAR ELEVATION AS EXISTING @ 1 : 50



FRONT ELEVATION AS PROPOSED @ 1 : 50



REAR ELEVATION AS PROPOSED @ 1 : 50

Notwithstanding the applicants' own views, the Local Planning Authority considers that limited details of the proposed materials and the plans provides little comfort that the materials would preserve and enhance the significance of the Borough's heritage assets in accordance with Policy CS20 (LPCS).

The physical structural difference between the existing and the proposed plans are marginal, but given the heritage sensitivities of the site, if the application were recommended for approval then the LPA would request a materials conditions to provide details/samples of the proposed materials.

In any event, the proposed development is consistent with Policies CS19 and CS20 (LPCS) and should the application be recommended for approval, a condition would be added to ensure compliance with Saved Policy S7(i) (LPFR).

Neighbouring Amenity

Class E(a)

The closest residential property is located at first floor level at the application site. In addition, there are residential properties at first floor level in the adjacent units and opposite the site at No.12 Darnley Road.

The location of the proposed extraction system would be to the rear, but limited details has been supplied of the extractor flue in terms of the dimensions the equipment, so it is not possible to fully appreciate whether there are adverse overshadowing or overbearing impacts to any surrounding residents/occupiers. It should be noted that in a previous application (ref 20020509), one of the reasons for refusal was because the ventilation ducting would be noticeable from Cobham Street. However, as has been noted above, the LPA now considers that the proposed ventilation/flue would have limited visibility from the adjacent street given the rear additions to the terraced properties of 21-27 Darnley Road and existing built form to the rear

of these properties.

The introduction of a restaurant at the application site has the potential to cause adverse odour and noise/disturbance impacts to the occupiers of surrounding residential properties from cooking/odour extraction activities, customer visits/activities, increased litter and from delivery activities. There are also further concerns with the impact of the ancillary hot food takeaway provisions to the proposed restaurant. Furthermore, these impacts to amenity were considered grounds for refusal in previous applications at the site for restaurants/with ancillary takeaway provisions (ref 20020832 and 20020509). For clarity a copy of the decision notices for 20020832 and 20020509 are attached as appendix 1.

The supporting information has not included proposed opening hours and as the application is not being supported it would not be appropriate to speculate on proposed openings hour. Limited details of the extractor/flue have been submitted and in the event of the application being supported this information would need to have been submitted prior to determination in order to evaluate the noise implications and the impact to residential amenity of surrounding residential properties.

Notwithstanding, the concerns to neighbouring amenity GBC Environmental Protection Team (Regulatory Services)) has raised no objection to the proposed development but advises that the hours of use and the installation of the extraction system should be suitably conditioned. However, the LPA still has concerns of the hot food takeaway element of the proposal and limited details has been provided in terms of the ancillary nature of the provisions at the site.

Hot Food Take Away – Sui Generis

Notwithstanding the application above, Policy CS19 (LPCS) seeks to ensure that new development will safeguard the amenity of its occupants and that of neighbouring properties and land, and avoid causing adverse environmental impacts from amongst things, noise and odour. Saved Policy S7 (LPFR) also seeks to ensure that hot food shops do not adversely affect residential amenity. In this case the proposed ancillary hot food takeaway element (sui generis) of the proposal, would be in close proximity to the existing residential properties and, without sufficient information of how the hot food takeaway would operate at the site, the opening hours of such a facility would detract from local residential amenity, and adversely affect the living conditions of the occupants of the first floor flats above the commercial units on this part of Darnley Road, in terms of increased noise and disturbance in the evenings and the introduction of odour from cooking and waste storage. As noted above, the planning history at the site for similar uses has been refused and, therefore, the LPA considers this a material consideration in the determination of this application.

Further Material Considerations

The adjacent property at 21 Darnley Road appears to be an existing take away unit and, for the purposes of this application, is a material consideration. It is acknowledged that the adjacent unit is fully operational as a Hot Food Cantonese & Peking takeaway, but having reviewed the history of the adjacent site, a Lawful Development Certificate application was approved for a hot food takeaway in 2006 under reference (2006030). Therefore, the LPA considers the ground floor unit at 23 Darnley Road has been granted a Lawful Development Certificate as the evidence submitted indicated the site had been used in excess of 10 years, which is the appropriate timescale before a site becomes lawful for a change of use. In light of this, the adjacent take away was not granted approval through the planning application process and the LPA is of the opinion that the current application at 21 Darnley Road would intensify/amplify the existing harms generated from the adjacent takeaway in terms of adverse impacts on the living conditions of the occupants of the first floor residential accommodation above 21 Darnley Road and the adjoining neighbouring first floor flats.

The LPA have also received comments from adjacent funeral service at 19 Darnley Road which mentions that the existing odours from the takeaway unit at no 23 Darnley Road adversely impact on the provisions of their services and on grieving customers.

Overall it is considered that the proposed development, would have significant adverse impacts on the residential amenity of surrounding occupiers and contrary Policy CS19 (LPCS) and Saved Policy S7 (LPFR) which the LPA considers consistent with the previous refusal at the site from 2002.

Parking and Highways

The application site is located close to the town centre within a mix of residential and commercial uses along Darnley Road which has double yellow lines on the highway fronting the site. On street parking is heavily controlled locally with either a total prohibition or a residents parking scheme in place, with only limited period of 8am to 6.30pm when permit holders may park.

The proposed development seeks permission for a restaurant with ancillary takeaway provisions, although, it is not clear whether a delivery service is proposed and/or how deliveries would be made to the site. Due to where the application site is situated within Darnley Road, the site is limited terms of its ability to provide offsite parking to customers or staff. The adjacent road at Cobham Street has parking permit restrictions on the southern side and a single yellow line to the north. After 6.30 customers could park on both sides of the road, while the southern side is generally allocated for residential purposes.

Notwithstanding this, it is acknowledged that the existing retail use could generate a number of vehicle movements to the immediate locality, however, the nature of food businesses are generally time sensitive and the impact to the highways is considered to be of greater than retail uses.

In light of the proposed restaurant use and take away services proposed, the narrow road along Cobham Street with single yellow line to the north and residential parking scheme to the southern side of the road, the development would encourage increased parking to the northern side of Cobham and/or parking to the double yellow lines along Darnley Road /on the residential area.

Therefore any short stay parking during the evening to access the takeaway could involve illegal parking to the detriment of highway safety and the amenity of local residents, but the possibility of enforcement given the nature using a take away is liable to be minimal. Furthermore, it could be argued the effects of the pandemic has seen an increase in takeaways and associated delivery services, which could see an increase number of vehicle and motor vehicle uses to the frontage of the site.

Saved Policy S7 (LPFR) seeks to ensure that hot food shops are located where there is sufficient car parking available to ensure that the proposal will not harm highway safety. As demonstrated above on street parking is an acute issue locality and the proposal is likely to increase demand for spaces. The proportion of Darnley Road fronting the application site is a Local Distributor Road the proposed development, the lack of available spaces nearby is likely to tempt people to park on street, irrespective of the parking restrictions, adversely impacting on the safe and free flow of traffic on the strategic route to the detriment of highway safety.

Both KCC Highways and GBC Highways were consulted on the application and made no objections to the overall scheme proposed. However, the latter did raise explicit concern with the takeaway element of the proposal, as visits to the site would be brief for takeaway collections and the double yellow lines fronting the property would do little to deter people from parking on them as the risk of being fined is minimal. As a result, GBC Highways mentions this could have an adverse impact on passing traffic particularly so close to a traffic signal controlled junction. On this basis, it was mentioned they would be minded to refusal the ancillary takeaway element of the proposal.

Furthermore, the adjacent Funeral Service provider at 19 Darnley Road has a drive directly adjacent to the northern flank wall of the application site. The business adjacent expressed concerns with additional parking obstructions fronting their driveway and resulting from the proposed development. The funeral service business requires access to their driveway 24 hours a day, due to the nature of their services.

Evidently, there would also be a conflict with Policy CS11 (LPCS) seeks to ensure that new development mitigates its impact on the highway network and ensure that there is sufficient parking spaces available. In light of the above, the proposal is contrary to saved policy S7 (LPFR) Policy CS11 (LPCS).

Conclusion & Recommendation

The proposal to include ancillary hot food takeaway provisions at the premises as discussed above, would lead to disturbance from customers, takeaway deliveries and delivery drivers to the detriment of residential and neighbouring amenity. It is worth noting the adjacent unit was not approved through the planning process, but rather a lawful development certificate was granted as the site had been used as a hot food takeaway in excess of 10 years, through the passage of time, was deemed lawful. Evidently, the proposed ancillary use of the hot food takeaway provisions would significantly intensify the harms generated by the existing takeaway at 23 Darnley Road and would be recommended for refusal on this basis.

As noted above, on street parking is an acute issue locally and the proposal is likely to increase demand for spaces, close to the Darnley Road junction which is a local distributor route within the highway network. Irrespective of existing parking restrictions and a lack of available spaces nearby is likely to tempt people to park illegally on the surrounding streets which will adversely impact on the safe and free flow of traffic to the detriment of highway safety. Furthermore, little details has been confirmed as to how the ancillary hot food takeaway service would operate and as a result the LPA is also concerned of the amenity of surrounding properties and to highway safety.

Case Officer:	Ms Genna Henry	Team Leader:	Richard Hat
Signed:	<i>G.Henry</i>	Signed:	<i>R Hart</i>
Dated:	11 November 2021	Dated:	12 th November 2021