



Delegated Report

Planning Application

Planning Application No: 20230080

Location: 153 Whitehill Road Gravesend Kent

Description: Change of use from closed shop (use class e(a)) into a hot food take away (use class 'sui generis')

Applicant: Mr T Aarunthavachelvam

Site Visit Date: 13th March 2023

Proposal

The application site is on the eastern side of Whitehill Road and consists of a two storey mid terrace building in a local centre where there are commercial units at ground floor with flats above. The surrounding area is predominantly residential in character.

No. 153 is not currently in use but has a 'Touro – Off License & Butcher' fascia sign to the shop front – the premises next door at no. 155 is in active use as a 'Costcutters' convenience shop.



Planning permission was refused in 2007 under ref. 20070342 for an identical proposal and then again (Against the same set of plans), it was refused in 2017 under ref. 20170380. It is noted that the 2007 application was reviewed at appeal and this was dismissed.

Submitted Documents/Plans

Application Form

Cover Letter

KD/COU/PP/73/22(O7)/W-002.1 – Location Plan, Existing Floor Plan and Elevations

KD/COU/PP/73/22(O7)/W-002.2 – Proposed Ground Floor Plan

KD/COU/PP/73/22(O7)/W-002.3 – Proposed Rear Elevation

KD/COU/PP/73/22(O7)/W-002.4 – Block Plan

Market Advert

Details of Fan Silencer

Details of Fan

Details of Carbon Filter

Relevant Planning History

Reference	Description	Decision	Decision Date
20170380	Change of use from A1 retail to A5 hot food takeaway and installation of an extraction flue pipe at the rear.	Refused	30.06.2017
Appeal Ref: APP/K2230/A/07/2054 416 (Included as Appendix A)	As below	Dismissed	10/04/2008
20070342	Change of use from A1 retail to A5 hot food takeaway and installation of an extraction flue pipe at the rear.	Refused (Dismissed at appeal)	16.07.2007
20030118	Erection of single storey rear extension to form dining room, kitchen, shower room/w.c. for the residential use and storage area for shop.	Permitted	11.01.2003

Development Plan

Gravesham Local Plan Core Strategy (September 2014):

- CS01 – Sustainable Development
- CS02 – Scale & Distribution of Development
- CS08 – Retail, Leisure and the Hierarchy of Centres
- CS12 – Green Infrastructure
- CS18 – Climate Change
- CS19 - Development & Design Principles

Gravesham Local Plan: First Review (1994)

- P3 – Vehicle Parking Standards
- S7 – Hot Food Shops and Restaurants and other A3 uses

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 sustainable development and well-designed places

Supplementary Planning Guidance

- SPG 4 - KCC Parking Standards (2006);

Consultations, Publicity and Representations

Consultees

Ward Councillors: No response received.

GB Highways Officer:

'This is a local centre with a mix of outlets including existing takeaways nearby. The premise is situated off the main through route with some limited on street parking available.'

I have no highway objections.'

GB Environmental Protection:

'No objection to this application. Bearing in mind the other food premises/takeaways in this parade, the use is suitable for the location provided the appropriate controls are put in place for dealing with cooking odours and noise from the ventilation/extraction system. It's noted that some details and information has been given regarding the extract system. Additional details will however be needed and this can be submitted by way of conditions. One aspect of note is that the flue ending should ideally be vertical rather than a 90 degree bend as shown on the plans.'

The proposed hours of use are acceptable.

Restaurant/Takeaway Odour

Prior to any works commencing on site, the applicant shall:

- 1) *Submit a scheme in writing to the Local Planning Authority for approval in relation to cooking odour/fume control. The extraction system must be designed and installed in accordance with the "EMAQ/Defra Control of Odour and Noise from Commercial Kitchen Exhaust Systems (2018 update)". Full details of proposed extraction system to deal with grease and odour control should include:*
 - a) *Plans and details of all duct work (internal and external) and equipment.*
 - b) *Plans showing the location/position of the external flue/discharge stack, including its position in relation to neighbouring properties and window openings.*
 - c) *Details of all grease filtration and odour control including the manufacturer's specification/data sheets. This includes the canopy.*
 - d) *Details, including manufacturer's specification/data sheets of the fan.*
 - e) *Details of proposed routine cleaning and maintenance of the system, and the service requirements of the installed odour control system, including details of system access panels and confirmation that they will be grease tight.*
 - f) *Details of the type of food to be cooked, the cooking time per day; and the type of cooking appliances to be used. Where the end user is not yet known, the extraction system shall be designed for a 'very high' grease content, a 'very high' level of odour potential and a 'very high' smoke content (EMAQ/Defra Control of Odour and Noise from Commercial Kitchen Exhaust Systems (2018 update)).*
- 2) *Install and commission the extract system using a competent ventilation engineer in accordance with approved details. Provide a commissioning report to the LPA to verify the installation, ensuring 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.

Reason: In the interests of protecting the amenity of adjoining/nearby residential properties and safeguarding the amenities of the surrounding area

Restaurant/Takeaway Noise

Prior to any works commencing on site, the applicant shall:

1) *Submit a scheme in writing, including a noise survey, to the Local Planning Authority for approval in relation to noise control. The extraction system must be designed and installed in accordance with the "EMAQ/Defra Control of Odour and Noise from Commercial Kitchen Exhaust Systems (2018 update)". The noise survey should assess the worst-case scenario noise impact from the proposed extract and ventilation system, on nearby residential properties and must:*

a) *Assess the whole system and any tonal elements associated it; a 1/3 octave band analysis may be necessary.*

b) *Assess structural transmission with the use of anti-vibration mounts where necessary, linings to ductwork to prevent noise transmission, any inline silencers and provide details of where they have been installed.*

c) *Use the results of the noise survey to ensure that the noise generated at the boundary of any noise sensitive property meets the requirements laid down in BS4142:2014 "Method for Rating and Assessing Industrial and Commercial Sound".*

2) *Install and commission the extract system using a competent ventilation engineer in accordance with approved details. Provide a commissioning report to the Local Planning Authority to verify the installation, including post completion noise levels.*

The equipment shall be maintained and operated in a condition such that the requirements of BS4142:2014 continue to be met. After installation of the approved plant, no new plant or ducting system shall be used without the written consent of the Local Planning Authority.

Reason: In the interests of protecting the amenity of adjoining/nearby residential properties and safeguarding the amenities of the surrounding area

Code of Practice on Construction and Demolition: Please apply as appropriate.'

Neighbouring properties

5no. surrounding properties were consulted and 0 comments from members of the public were received. The principal issues in the consideration of this application are:

- Impact on the local centre
- Impact on the living conditions of nearby properties
- Impact on highway safety

Officer's Analysis

Principle of use and impact on the local centre

Planning permission was refused in 2007 for change of use of no. 153 from A1 retail to A5 hot food takeaway and installation of an extraction flue pipe at the rear. This was dismissed on appeal because it would result in a cluster of three A5 units within a parade of 5 shops, adversely impacting on the retail character and functioning of the local centre. In addition, potential adverse impact on residential amenity was identified notwithstanding the presence of the two existing takeaways.

It is noted that the 2007 application and appeal were determined on the basis of policies S6 and S7 of the Gravesham Local Plan First Review (1994).

Whilst policy S7 was 'saved' and remains material in determining any application, with the weight accorded it dependent on its consistency with the NPPF, policy S6 was superseded by Local Plan Core Strategy (2014) policy CS08 on Retail, Leisure and the Hierarchy of Centres. This seeks to reinforce a sustainable network and hierarchy of centres and affords protection to existing local centres to safeguard their retail character and function. Development that would adversely affect their vitality and viability is to be resisted under the policy. Saved policy S7 (Hot Food Shops and Restaurants and other A3 units) states that such uses should not cluster with other similar uses to create a dead frontage, should not have a detrimental effect on the amenity of any nearby residential accommodation, should have adequate parking and ventilation trunking should be as discreetly located on the building.

In his appeal decision the Inspector noted:

Two of the units in the parade (nos. 149 and 151) are already in hot food takeaway use. Accordingly, the appeal, if allowed, would result in three consecutive units out of five not being in retail (Class A1) use. It seems to me that, were I to allow the appeal, it would further limit the capacity of this local centre to meet local shopping needs.

On the first main issue I therefore conclude that the proposed change of use would have an adverse effect on the retail character and function of 147-155 Whitehill Road and would be in conflict in this respect with saved local plan policies S6 and S7.

Since the appeal decision, the parade remains as it was at the time of the application in 2007 (With the exception of the application site):

- No. No. 147 – Potters Kitchens (E(a))
- No. 149 - Lucky Jade takeaway (Sui Generis)
- No. 151 – Le Spice takeaway (Sui Generis)
- No. 153 – Touro Off License and Butcher (E(a))
- No. 155 – Costcutters (E(a))

It is noted that since 2007 the former Whitehill Tavern has been converted to an A1 use (Tesco – GR20090985). Given this contributes to the vitality and viability of the local centre, this is a material consideration that should be taken into account. However, although this does add to the retail function of the local centre, the proposal would still result in the loss of a retail unit and would still result in a clustering of three A3 units in a row which would be likely to place the two A1 units that would remain in the parade itself at risk further undermining the ability of the local centre to meet day to day needs in the locality. As such, it is considered that the proposed change of use from Sui Generis to E(a) takeaway would still have an adverse effect on the retail character and function of the local centre contrary to Policy CS08 of the Local Plan Core Strategy, September 2014 and Policy S7 of the Local Plan First Review, 1994.

As such, it is considered that the proposed change of use from Sui Generis to E(a) takeaway would still have an adverse effect on the retail character and function of the local centre contrary to Policy CS08 of the Local Plan Core Strategy, September 2014 and Policy S7 of the Local Plan First Review, 1994.

Impact on the living conditions of nearby properties

There are flats above the units in the parade and the surrounding area is predominantly residential. In his appeal decision the Inspector noted that an A5 use (now E(a)) use, generates relatively high levels of vehicular and pedestrian activity and trades well into the evenings. In that appeal the proposed hours were 1000 to 2300 seven days a week although the applicant had advised they would accept closing at 2100 as an alternative to refusal. In this application it is again the proposal to operate with the opening hours of 10:00 to 22:00 Mondays through to Saturdays and 11:00 to 20:00 on Sundays and Bank Holidays. The

inspector stated in his appeal response:

8. There are two existing hot food takeaways in the parade currently. Consequently I would expect there to be a certain amount of noise and disturbance in the evenings already - from vehicle movements and parking, and from customers congregating outside the premises. However, I do not consider that the presence of two such uses means that a third would be unnoticed. It seems to me that a third hot food takeaway (even one required by condition to close at 2100) would be likely, at least to a degree, to add to general noise and disturbance occurring outside the parade in the evenings and as a consequence be harmful to residential amenity in this location. I do not consider that the harm would be greatly mitigated by the fact that the parade benefits from a forecourt and a parking lay-by. I note that the appellant would accept a condition requiring the unit to be sound-insulated, but this would not address noise and disturbance outside.
9. The possible adverse impact of cooking odours is a further matter of concern both for the Council and interested persons. However, had I been minded to grant permission, it would have been open to me to impose a condition to secure the installation of suitable ventilation and fume extract equipment. I consider that such a condition would have been capable of addressing the concerns expressed about odours sufficiently.
10. On the second main issue I therefore conclude that the proposed change of use would have an adverse effect on the living conditions of nearby residents by reason of noise and disturbance (although not by reason of odours). In this respect it would be in conflict with saved local plan policy S7.

It is considered that the harmful impact on residential amenity through noise and disturbance remains with this current proposal as there is not any changes in this regard. The neighbouring properties still exist, the proposed use is the same and the openings hours although reduced, would continue to add noise and disturbance outside, in the evenings.

The proposed takeaway use would be likely to result in harm to the amenity of occupiers of nearby properties by virtue of impact from noise and disturbance from customers using the takeaway – such as comings and goings with vehicle movements, car doors slamming, horns tooting and noise from talking and shouting from customers when going to and from the premises and congregating outside. It is also noted that the impact of online delivery services could exacerbate these issues, with a high likelihood of a significant increase of footfall and gathering from delivery drivers. This would be additional harm caused on top of the two existing takeaways in the parade which the Inspector stated that even to a degree would add to the general noise and disturbance occurring outside the parade. The proposal would therefore also be contrary to Policy CS19 of the Local Plan Core Strategy, September 2014 and Policy S7 of the Local Plan First Review, 1994 which expect development to safeguard the amenity, of its occupants and those of neighbouring properties and land.

In the event that planning permission was to be recommended then it is considered, as the Planning Inspectorate found, that a planning condition could be attached in order to mitigate any adverse odour impacts. In this instance conditions as recommended by Environmental Protection and other potential conditions to overcome issues of noise and disturbance from customers and environmental impacts from the change of use to a takeaway would not adequately resolve the significant impact on the adjoining neighbours from the introduction of a third takeaway in this row of retail units.

Parking

The shopping parade benefits from a forecourt and parking lay-by. Therefore, it is considered that there would be sufficient parking for the proposal. In this instance, the Highways Officer raised no objections to the scheme.

Other Matters

The main change from this submission to the refusals in 2007 and 2017 is the cover letter which makes an argument that the existing use is not economically viable. They advise that most recently following the

closure of the Toure – convenience store and butcher, they attempted to rent the shop but there was no interest. The property was put up for sale in October 2022 (Freehold and leasehold) with only one appointment made to view the property. They also suggest that despite there being a Chinese and Indian takeaway nearby, the cuisine would provide a different option. However, despite being a different cuisine, the use as a takeaway would remain the same and would harm the retail character and function of the local centre, for which there should be a variety of uses. Details of the length of time which the property was placed on market and considerations of reduced price for the sale have not been provided. Nor, have any details of advertisement for rental been provided. Given that the Toure shop was closed in August 2022 and the shop was up for sale in October 2022, it is likely that this was not a long period of time. Also, the shop has been refused permission for the very same change of use twice previously, and other alternative proposed uses of the shop have not been proposed, which would not result in an intensified number of takeaways on this row of units.

Conclusion & Recommendation

Whilst, it is understood that the market for the convenience store has become difficult and this does hold some weight, this does not outweigh the significant harm to the character of the retail area and residential amenity of neighbours. As such, much of this assessment has reflected the previous reports as the points remain relevant and the reasons for refusal are not overcome.

The proposed change of use would result in the loss of a retail unit and a clustering of E(a) uses in this parade to the detriment of the retail character and function of the local centre. As such, the proposal is contrary to Policy CS08 of the Gravesham Local Plan Core Strategy, September 2014 and Policy S7 of the Gravesham Local Plan First Review 1994 which expect development to safeguard the retail character and function of local centres by resisting development that would adversely affect their vitality and viability.

The proposed change of use would have a detrimental effect on the amenity of nearby residential accommodation. The application site lies within a local centre within a predominantly residential area where there is residential property in close proximity. The use of the premises as a hot food takeaway would lead to noise and disturbance to local residents by reason of late night vehicle movements and associated people noise. As such the proposal is therefore contrary to Policy CS19 of the Gravesham Local Plan Core Strategy, September 2014 and Policy S7 of the Gravesham Local Plan First Review 1994 which expects development to safeguard the amenity of neighbouring properties.

(For detailed conditions / reasons for refusal and informatives, see draft Decision)

Case Officer:	Ms Lisa Williams	Team Leader:	Richard Hart
Signed:		Signed:	<i>R Hart</i>
Dated:	23rd March 2023	Dated:	27th March 2023