



Delegated Report

Planning Application

Application no: 20210175

Location: 148 Parrock Street Gravesend Kent DA12 1EY

Description: Application for a determination pursuant to Article 3 of and Class C(a) and (b) of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as to whether Prior Approval is required in respect of the proposed change of use from Class E (retail) to Class E (restaurants).

Applicant: Mr Hayi Mandizhi

Site Visit Date: Desk top assessment

Plans & Documents

- Application form;
- Site location plan (1:1250);
- Drawing – 1:50 plan, sections;
- 3D plan 1;
- 3D plan 2;
- 3D plan 3; and
- 3D plan 4.

Property Type

The application site is a two storey terraced building. The ground floor was last in use as a travel agent with offices above. The building is located in a row of commercial premises including a takeaway next door at no. 147, there is generally residential on the upper floors.

Relevant Planning History

Application No.	Description	Status	Decision
19850814	Use of the basement and ground floor as retail with office at first floor level	Permitted	03.12.1985

Development Plan

The application stands to be assessed under the terms of Schedule 2, Part 3, Class C of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) to determine whether the proposed change of use and building operations are permitted development or not.

Adopted development plan policy is therefore not necessarily a relevant consideration although the legislation does however require the Local Planning Authority to have regard to the National Planning Policy Framework so far as it is relevant to the subject matter of the prior approval, as if the application were a planning application.

Gravesham Local Plan Core Strategy (September 2014):

- CS01 – Sustainable Development
- CS02 – Scale & Distribution of Development
- CS05 – Gravesend Town Centre Opportunity Area
- CS08 – Retail, Leisure and Hierarchy of Centres
- CS11 – Transport
- CS18 – Climate Change
- CS19 - Development & Design Principles

Gravesham Local Plan: First Review (1994)

- AP2 – Parrock Street
- P5 – Exceptions to the Vehicle Parking Standards – Change of Use of Buildings
- S7 – Hot Food Shops and Restaurants and Other A3 Uses
- T1 – T3 - Impact of Development on Highway Network

Other material considerations

National Planning Policy Framework (2019)

- Sections 2 - Achieving sustainable development
- Section 6 – Building a strong, competitive economy
- Section 7 – Ensuring the vitality of town centres
- Section 9 – Promoting sustainable transport
- Section 12 – Achieving well-designed places

Supplementary Planning Guidance

- SPG2: Residential layout guidelines including Housing Standards Policy Statement October 2015 Adopted 1996 – amended June 2020;
- SPG4 - Kent Vehicle Parking Standards (July 2006)

Planning Legislation

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Consultation, Publicity and Representations

GBC Regulatory Services – Environmental Protection

No objection to this takeaway in principle as there is already one right next door. Please however apply the following conditions/informatives

Opening Hours

The closing time of 10pm is fine, however I have concerns regarding the impact that deliveries could have on nearby residents with an opening time of 7am.

I would therefore wish for a condition that prohibits deliveries and collections no earlier than 8am.

Noise & Cooking Odours from Air Extraction Unit

Prior to determination of this application the applicant is required to provide the following to the LPA for approval:

a. Details of the ventilation extraction system, particularly regarding odour elimination abilities, residence time of the air within the filters and likely noise emissions shall be submitted to and approved, in writing by

the Local Planning Authority. The approved scheme shall be installed prior to operation in accordance with the approved details.

b. A sound insulation assessment shall be carried out and submitted to and approved in writing by the Local Planning Authority. The Assessment shall include details of the substantially enhanced sound insulation performance of the construction that separates the residential and commercial unit, which shall aim to resist the transmission of airborne sound such that the weighted standardised difference (DnT, W + Ctr) is not be less than 53 decibels (i.e. an enhancement of the minimum levels stated in the Building Regulations of 10dB). The scheme shall then be installed prior to occupation in accordance with the approved details.

c. A noise impact assessment shall be carried out detailing the impact on the existing and proposed residences arising from the proposed ground floor use (including from customer noise, plant and machinery, odour extraction system, early morning deliveries, etc.) A suitable scheme that takes into account the above assessments of the site shall be submitted to and approved in writing by the Local Planning Authority. Reference shall be made to British Standard 8233:2014 and BS4142:2014. The approved scheme shall be implemented prior to occupation and operation.

Smoke Control Area

The premises is located with the smoke control area and we would therefore ask for the following Informative to be included:

The proposed development is situated in a smoke control area. As such, only authorised smokeless fuels as listed in the Smoke Control Areas (Authorised Fuels) Regulations 1991 shall be burnt, or fireplaces/appliances exempted by Smoke Control (Exempted Fireplaces) Orders shall be utilised. Exempt appliances are appliances (ovens including pizza and tandoori ovens, wood burners and stoves) which have been exempted by Statutory Instruments (Orders) under the Clean Air Act 1993. These have passed tests to confirm that they are capable of burning an unauthorised or inherently smoky solid fuel without emitting smoke. They must be fitted and used according to manufacturer's instructions and they can only be used for the fuel for which they are designed.

When purchasing fuels and fireplaces the applicant should clarify with the vendor their suitability with respect to use in Smoke Control Areas. For further information, including confirmation that an appliance and/or fuel is suitable for use in a smoke control area, the applicant should contact the Council's Regulatory Services by emailing: air.quality@gravesham.gov.uk

Code of Practice on Construction and Demolition

Please apply.

GBC Regulatory Services – Commercial

No objection to this takeaway in principle. The following comments are made for the information of the applicant.

Health and Safety

In these premises Gravesham Borough Council (GBC) Environmental Health will be the enforcing authority. The applicant must ensure that these premises comply fully with the Health and Safety at Work (etc) Act 1974 and all relevant regulations made there under. For information and advice on health and safety matters check out the HSE website www.hse.gov.uk or contact the Environmental Health team on commercialhealth.admin@gravesham.gov.uk or 01474 337 000.

This workplace will be immediately subject to the requirements of the Workplace (Health, Safety and Welfare) Regulations 1992. Particular attention should be made to the following requirements.

- Regulation 6 requires that effective and suitable provision shall be made to ensure that every enclosed workplace is ventilated by a sufficient quantity of fresh or purified air.
- Regulation 14 requires that every window or other transparent or translucent surface in a door or gate shall where necessary for reasons of safety be constructed of a safety material or be protected against breakage and also be appropriately marked.

- Regulation 20 requires that suitable and sufficient sanitary conveniences shall be provided at readily accessible places. Where between 6 and 25 persons are employed a minimum of 2 water closets must be provided.

Food Safety Comments

I am unable to fully comment on the structure of the kitchen as the plans do not provide me with a detailed layout. However, the applicant must ensure that the kitchen fully complies with current food safety legislation to the satisfaction of the Regulatory Services Manager. Structural and operational requirements are covered by the legislation notably EC Regulation 852/2004.

All internal structures to the kitchen must be impervious, non-absorbent and washable i.e. easy to clean and maintain in a clean condition.

Where inspection chambers become part of the internal structure of the kitchen they must be closed with a secure, sealed, airtight cover.

Ensure that any waste pipes which become part of the internal structure of the kitchen terminate externally at an appropriate height.

Any floor drains which become part of the internal structure of the kitchen must be fitted with a close-fitting grill which is easy to clean.

The kitchen should be pest proofed as far as possible i.e. gaps and holes to external doors, windows, pipes and drains etc. must be filled or covered with a solid, durable material in order to minimise pest entry points in to food preparation and storage areas.

Lavatories must not lead directly into rooms in which food is handled, stored or prepared. There should be an intervening ventilated space between toilets and food rooms. Food should not be stored in that space.

The provision and location of sinks and wash hand basins is an important consideration in the design and planning of a kitchen. A minimum of 1 separate wash hand basin and a double sink unit must be installed. A dishwasher is also recommended.

The layout and scale of the business operation is such that mechanical ventilation, with a balanced air intake and appropriate extract system, is likely to be required. This will need to achieve a minimum of 30 air changes per hour and a maximum ambient temperature of 25C within the working kitchen. I recommend that you contact a specialist contractor in this regard.

It is a requirement under Article 6(2) of Regulation 852/2004 that food business operators must register their establishments with the appropriate competent authority (in this case GBC Environmental Health) at least 28 days before food operations commence. I confirm that this food business has already registered.

For further advice on starting a food business please visit the FSA website
<https://www.food.gov.uk/business-guidance>

GBC Highways Development Management Officer

As far as I can ascertain this will not be a restaurant but a hot food takeaway.

As a pure restaurant I would have no objections as there is a public car park opposite. However, as a hot food takeaway road safety issues are raised, will drivers use the car park or if they are just collecting instead park on Parrock Street ignoring the on street waiting restrictions as there is little prospect of being fined for illegal parking. This would restrict the free flow of traffic and be a potential safety hazard with vehicles exiting the Council public car park, being confronted with slowing or stopped vehicles.

Therefore, in this particular instance given the proximity of the access to the public car park I would recommend refusal on road safety grounds.

Publicity

In accordance with the requirements of paragraph W(8) of Part 3, Schedule 2 of the GPDO, the application was publicised by a site notice and to eight adjoining neighbouring properties by letter. Two representations have been received both of which object to the proposal, the comments of which are summarised as follows;

Noise

Smell to residences behind and above

Increase in anti-social behaviour

Increase in rat problem in area

Increase in parking as people mount the pavement to get takeaways

This application is confusing – in order for a Class E restaurant/café application there has to be floor space for diners to sit and eat but the plans do not show this as there is no floorspace for seating this clearly looks like an application for a hot food takeaway

There is no information regarding noise levels or extraction system

There would be a clustering of such uses, takeaway recently approved at 147 Parrock Street; and

Would disturb their and neighbours quality of life in the area.

Analysis

This application is not a planning application but an application as to whether prior approval is required for the change of use of Class A1 retail shop to a Class A3 restaurant/café (note: 'A1' and 'A3' is still referred to for the purpose of interpreting permitted development rights to 31 July 2021.)

Under current planning rules (Class C of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - the GPDO) you can change to a restaurant/café (Class A3) from an A1 premises along with other associated works within certain limitations and conditions as permitted development. The assessment of these is as follows:

C. Development consisting of—	Y/N
(a) a change of use of a building from a use— (i) falling within Class A1 (shops) or Class A2 (financial and professional services) of the Schedule to the Use Classes Order, (ii) as a betting office or pay day loan shop, or (iii) as a casino, to a use falling within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order, and or	(i) Yes – A travel agent would fall within use class A1. (ii) N/A (iii) No – The proposed use is for a takeaway not a restaurant. On the application form under qu. 5 the applicant calls the proposed use a 'South American takeaway restaurant' and 'takeaway food business'. From the floor plan and 3D images submitted it is clear from the internal layout that the premises would not be a restaurant but a takeaway. There would be an entrance lobby, counter and kitchen behind. There is no actual restaurant area. Customers could only stand in the entrance lobby and order food at the counter to eat off the premises. The proposed use is a takeaway not a restaurant and as such cannot benefit from Class C. For clarity under the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 a takeaway now falls under Sui Generis.

(b) development referred to in paragraph (a) together with building or other operations for the provision of facilities for— (i) ventilation and extraction (including the provision of an external flue), and (ii) the storage of rubbish, reasonably necessary to use the building for a use falling within Class A3 (restaurants and cafes) of that Schedule.	b (i) No – On the application form at qu. 5 the applicant has ticked the box to state there are no other associated building works or other operations required to make the change of use but then refers to an extraction system later on in the question. In any case, the proposed use is not considered to be development referred to in paragraph (a).
Development not permitted—	
C.1 Development is not permitted by Class C if—	
(a) the cumulative floor space of the existing building changing use under Class C exceeds 150 square metres;	No
(b) the development (together with any previous development under Class C) would result in more than 150 square metres of floor space in the building having changed use under Class C;	No
(c) the land or the site on which the building is located is or forms part of— (i) a site of special scientific interest; (ii) a safety hazard area; or (iii) a military explosives storage area;	(i) No (ii) No (iii) No
(d) the site is, or contains, a scheduled monument; or	No
(e) the land or building is a listed building or is within the curtilage of a listed building.	No
Conditions: C.2 –	
(1) Where the development proposed is development under Class C(a) together with development under Class C(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—	
(a) noise impacts of the development,	On the application form the applicant states that due to the small amount of work needed, construction noise will be kept to a minimum during office hours and the canopy and hood will also reduce any noise coming from the extractor fan once it's installed. However, no details have been submitted on the potential noise emissions from the ventilation extraction system in order to assess this. Furthermore, no details have been submitted with regards people noise from the use from comings and goings, talking, shouting, car doors, engines revving, etc. INSUFFICIENT INFORMATION SUBMITTED
(b) odour impacts of the development,	On the application form the applicant states that the 'chimney commercial extractor fan will eliminate any

	food odours'. However, no details have been submitted of the ventilation extraction system including its odour elimination abilities. INSUFFICIENT INFORMATION SUBMITTED
(c) impacts of storage and handling of waste in relation to the development,	On the application form the applicant states that because it is a small takeaway food business, they do not anticipate a lot of waste but they will have a sizeable bin in the back garage space and will pay the local authority to collect weekly. However, no information has been submitted of the exact details of location, type of refuse storage. INSUFFICIENT INFORMATION SUBMITTED
(d) impacts of the hours of opening of the development,	The proposal is for Monday - - Saturday 07:00 – 22:00 and Sundays and Bank Holidays 17:00 - 22:00. Regulatory Services have concerns at the 7am opening and the noise impact deliveries at that time could have on local residents. 7am does seem very early for such a takeaway use. Regulatory Services advise from 8am would be more acceptable. However, the opening hours as proposed as considered unacceptable.
(e) transport and highways impacts of the development,	No information at all has been submitted in regard to transport and the highway impacts of the development. The Highways Officer raises an objection to the proposal in regards vehicles parking on the pavement and so users of the public car park opposite being confronted by slow moving or parked vehicles affecting the free flow of traffic. HIGHWAY IMPACT
(f) whether it is undesirable for the building to change to a use falling within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order because of the impact of the change of use— (i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, Class A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or (ii) where the building is located in a key shopping area, on the sustainability of that shopping area, and	The building is not located in a key shopping area
(g) the siting, design or external appearance of the facilities to be provided under Class C(b), and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.	INSUFFICIENT INFORMATION
(2) Where the development proposed is development under Class C(a) only, development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the items referred to in sub-paragraphs (1)(a) to (f) and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.	N/A The development would include other operations despite the applicant stating contradictory information under qu. 5 on this matter.
	N/A

(3) Development under Class C is permitted subject to the condition that development under Class C(a), and under Class C(b), if any, must begin within a period of 3 years starting with the prior approval date.	
---	--

Conclusion

The proposed use would be a takeaway not a restaurant and so cannot benefit from the permitted development rights under Class C of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Furthermore, the proposed use is likely to cause harm in regards highway safety and hours of opening and insufficient information has been submitted in regard to noise impacts, odour impacts, storage and handling of waste and the siting, design and external appearance of the associated development. As such the proposed development would not comply with Class C, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and planning permission would be required for the proposed development.

Recommendation:

Prior Approval is Required and Refused

Case Officer: RH

Team Leader: Miss Faye Hobbs

Signed: *Rebecca Harrison*

Signed:



Dated: 24/05/2021

Dated: 24 May 2021