

**APPENDIX 1**

<b>2.4 REFERENCE NO - 21/506021/FULL</b>		
<b>APPLICATION PROPOSAL</b>		
Section 73 - Application for variation of condition 3 (to allow take-away to be open 7 days a week from 16:30 to 22:00) pursuant to SW/06/0575 for - Change of use from retail (Class A1) to take-away (Class A5).		
<b>ADDRESS</b> 21 Chaucer Road Sittingbourne Kent ME10 1EZ		
<b>RECOMMENDATION</b> – Grant subject to conditions		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>		
Whilst the later opening hours proposed by the applicant are not considered to be appropriate during the week, in accordance with the advice received from the Environmental Health team, it is considered that, subject to condition, a revision could be made to the current opening hours to allow for limited Sunday opening hours and later opening hours until 10pm on Friday and Saturday without resulting in excessive noise pollution, in accordance with the requirements of Policy DM14 of the Swale Local Plan 2017.		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
The application has been referred to the Planning Committee by Cllr Simon Clark owing to the concerns raised by local residents in relation to noise levels. Cllr Clark has also expressed concerns in relation to ongoing breaches of condition as the premises have been opening beyond 9pm and concerns relating to the conversion of a storage shed in the grounds of the property into living accommodation without planning consent.		
<b>WARD</b> Homewood	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Mr Kishore Dey <b>AGENT</b> Architectural Designs
<b>DECISION DUE DATE</b>  11/03/22		<b>PUBLICITY EXPIRY DATE</b>  06/01/22

**PLANNING HISTORY**

SW/06/0575

Change of use from retail (Class A1) to take-away (Class A5)

Approved Decision Date: 21.07.2006

SW/81/1247

Single storey extension

Approved Decision Date: 22.12.1981

**1. DESCRIPTION OF SITE**

- 1.1 The subject property is comprised of an end-terraced commercial unit with a self contained residential flat above. The commercial premises on the ground floor are

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currently being used as a take-away restaurant. The property forms part of a small purpose-built commercial shopping parade which provides a number of essential services to the residential properties in the surrounding roads. The parade contains two other take-away restaurants, and other shops including a local convenience store/newsagents. The wider area is predominantly residential.

1.2 The property lies in an urban area, within the built-up area boundary of Sittingbourne.

**2. PROPOSAL**

2.1 The application proposal relates to the variation of condition 3 of application ref: SW/06/0575.

2.2 The applicant seeks to vary the current permitted opening hours to allow the premises to remain open 7 days a week from 16:30 to 22:00.

**3. PLANNING CONSTRAINTS**

3.1 None relevant to this application

**4. POLICY AND CONSIDERATIONS**

4.1 National Planning Policy Framework 2021

4.2 Bearing Fruits 2031: The Swale Borough Local Plan 2017

DM1 Maintaining and enhancing the vitality of town centres and other areas  
DM2 Proposals for main town centre uses  
DM14 General development criteria

**5. LOCAL REPRESENTATIONS**

5.1 Three local representations have been received, objecting to the proposal on the following grounds:

- Potential resultant noise pollution from the operation of the take-away business over longer periods and disturbance from the associated deliveries.

– Existing noise issues relating to staff not leaving the site in a timely manner

**6. CONSULTATIONS**

6.1 **Environmental Health Team** – Object to the principle of opening from 16.30-22.00 for seven days a week. However, they would support the principle of later opening hours on Friday and Saturday and the principle of opening on a Sunday as long as they were limited to be no later than 8pm.

6.2 **Ward Councillors** – Cllr Clark objects to the proposal owing to the concerns raised by local residents in relation to noise levels and concerns in relation to ongoing breaches of condition as referenced above.

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**7. BACKGROUND PAPERS AND PLANS**

7.1 Application papers for application 21/506021/FULL

**8. APPRAISAL**

8.1 Paragraph 031 of the NPPG on the Use of Planning Conditions states that 'In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application.' On this basis, an assessment under section 73 should be focused on the changes sought.

8.2 The application seeks to vary condition 3 of planning permission SW/06/0575.

8.3 The original application, which was granted on 21st July 2006, permitted a change of use from retail (Class A1) to take-away use (Class A5), and the decision was subject to the following condition:

8.4 Condition 3:

*'The premises shall not be open to the public other than between the hours of 11.30am and 9pm from Monday-Saturday and not at any time on Sundays and Public Holidays.'*

*Reason 'In the interests of residential amenity of local residents and in pursuance of policies S5 and G1 of the Swale Borough Local Plan.'*

8.5 There have been changes to both National Planning Policy and to the Local Development Plan for Swale since the application was granted. Accordingly the proposed changes to the specified condition shall be assessed against the current NPPF and the current adopted local plan for Swale (Bearing Fruits 2031: The Swale Borough Local Plan 2017).

8.6 The condition was originally imposed to protect the amenities of local residents. Policy DM14 of the Local Plan states that any new proposed developments should not cause significant harm to the amenities of surrounding uses or areas and due consideration will be given to the impact of the proposed development upon neighbouring properties, including excessive noise or odour pollution.

8.7 The site is located at the end of a parade of shops with flats above the units. The site is also adjacent to residential dwellings to the north.

8.8 Two other take-away businesses appear to be operating within the parade. A fish and chips shop is being operated from 18 Chaucer Road (Chaucer Fish Bar, which is permitted to open between 15.30-20.30 from Monday-Saturday) and a Chinese take-away is operating from 27 Chaucer Road (Yummy Yummy Chinese take-away, which is permitted to open between 11.30am and 21.00 from Monday-Saturday).

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- 8.9 It is acknowledged that allowing later opening hours will result in additional activity on the site after 9pm due to increased footfall from customers, delivery drivers and staff. In addition, it is likely that the later hours will impact when staff leave the premises after the take-away business has closed as some cleaning is usually required after hours. Given the nature of the business, a balance needs to be struck between reasonable operational needs and protection of residential amenity. The local representations received express concerns relating to the potential for undue noise and disturbance as a result of any potential extended opening hours, including the issue of staff leaving the site later in the evening and deliveries being made late at night. I note that whilst the current condition restricts opening hours to members of the public, it does not prevent staff from working later.
- 8.10 I have consulted with the Environmental Health team, who have advised that they are aware of some recent complaints made by local residents living in nearby premises and they do not recommend allowing an extension to the opening hours from Monday-Thursday, when local residents are likely to be working. However, they consider that allowing the business to open later on Fridays and Saturdays would be acceptable as they consider that there is a greater tolerance for slightly later opening at the weekend and they acknowledge the difficulties of running a take-away food business which has to close at 9pm on weekends. They also do not object to the principle of allowing the premises to operate on a Sunday, provided that the opening hours are limited to be no later than 8pm.
- 8.11 In light of the advice from Environmental Health, I consider it would be reasonable to allow the takeaway to open until 10pm on a Friday and Saturday and until 8pm on a Sunday. These extended hours would provide economic benefits to the business and I do not consider that they would cause unacceptable harm to the amenities of surrounding residential properties. However, in allowing such a modification to the opening hours, I also consider it would also be reasonable to amend the condition to oblige the staff to leave the premises within an hour after closing time. The amended opening hours would be as follows -
- Monday-Thursday – 11.30am-9pm (as per the existing planning permission)
- Friday/Saturday – 11.30am-10pm
- Sunday – 4.30pm-8pm
- 8.12 It is considered that amending the condition as proposed to limit the amount of time staff can remain at the premises after closing time should limit the potential for excessive noise pollution at anti-social times of day.

Parking/Highways

- 8.13 Policy DM7 states that parking requirements in respect of any new proposed developments should be in accordance with Kent County Council vehicle parking standards.

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- 8.14 As the take-away restaurant is already operating for six days a week and the proposed changes to the permitted opening hours allow for very limited increases to the hours of operation, it is considered that the proposed changes to the opening hours will not significantly impact the availability of parking in the area.

Other Matters

- 8.15 Some concerns have been raised by Cllr Clark in relation to an outbuilding in the rear garden and whether the building is being used to provide living accommodation without planning permission. The issue is currently being investigated by the Planning Enforcement Team as a separate matter to this planning application.

**9. CONCLUSION**

- 9.1 Whilst the proposed changes to the permitted opening hours from Monday-Thursday are not considered to be acceptable, it is recommended that a variation to condition 3 should be allowed to permit later opening hours until 10pm on Friday and Saturday. It is also recommended that the business should be permitted to operate on a Sunday from 4.30pm until 8pm. I am satisfied that the potential concerns relating to noise pollution could be controlled via condition to ensure that staff leave the premises within a set timeframe.

- 10. RECOMMENDATION - GRANT**, Subject to the following conditions.

**CONDITIONS**

- (1) The premises shall not be open to the public other than between the hours of 11.30am and 9pm from Monday-Thursday, between the hours of 11.30am and 10pm on Friday and Saturday and between the hours of 4.30pm and 8pm on Sundays and Public Holidays, and no staff shall be permitted in the premises any later than one hour after the above stated opening hours.

Reason: In the interests of preserving and protecting the amenity of local residents.

- (2) The mechanical ventilation system which has been installed pursuant to condition 2 of planning application ref: SW/06/0575 shall be maintained and operated in a manner which prevents the transmission of odours, fumes, noise and vibration to the neighbouring premises.

Reason: In the interests of preserving and protecting the amenity of local residents.

- (3) The use hereby permitted is limited to the ground floor only of the premises identified on the plans accompanying planning application ref: SW/06/0575.

Reason: For the avoidance of doubt and in the interests of preserving and protecting the amenity of local residents.

**The Council's approach to the application**

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In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2021 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

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