

<b>3.4 REFERENCE NO - 15/503038/FULL</b>			
<b>APPLICATION PROPOSAL</b> Change of use from A1 and C3 use to C3 use only.			
<b>ADDRESS</b> 75 High Street Milton Regis Sittingbourne Kent ME10 2AR			
<b>RECOMMENDATION - REFUSAL</b>			
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b> The proposal fails to provide sufficient marketing information to demonstrate that there is no demand for the retention of the shop in retail use, or that of another service or facility. In the absence of such information, the proposed use would fail to maintain the vitality and viability of High Street, contrary to Policy B3 of the Swale Borough Council Local Plan 2008.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> At the request of Councillor Clark			
<b>WARD</b> Milton Regis	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Mr John Stephens <b>AGENT</b> CJS Design Services	
<b>DECISION DUE DATE</b> 25/06/15	<b>PUBLICITY EXPIRY DATE</b> 12/05/15		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/14/0245	Change of use from commercial premises previously a Post Office to residential use	Refused	22/04/2015
Reason for refusal: The proposal fails to provide sufficient marketing information to demonstrate that there is no demand for the retention of the shop in retail use. In the absence of such information, the proposed use would fail to maintain the vitality and viability of High Street, contrary to Policy B3 of the Swale Borough Council Local Plan 2008.			
SW/14/0245 (APP/V2255/A/1 4/2219483)	Appeal made against above refusal to grant planning permission	Appeal is dismissed	07/08/2015
Appeal dismissed - The change of use would result in material harm to the vitality and viability of Milton Regis High Street and there has been insufficient evidence provided to demonstrate that there is a lack of demand for an appropriate use.			

## MAIN REPORT

### 1.0 DESCRIPTION OF SITE

- 1.01 The application site is within central Milton Regis, located on the High Street within the commercial centre. The site is bound by retail units to the north and south, the High Street to the east and Cortland Mews to the west. The site currently comprises a vacant shop unit, previously used as a Post office, and associated residential accommodation to the rear and the upper floors. Neighbouring properties are made up of retail and other commercial units.
- 1.02 The application site relates specifically to the ground floor of a three storey Grade II Listed Building, first listed in 1951. The building is one of a number of listed buildings on the High Street. The High Street and surrounding area are within a designated Conservation Area.

### 2.0 PROPOSAL

- 2.01 This planning application is for a change of use from Class A1 and C3 use to C3 use only. The development site currently consists of retail space, formally used as a Post Office, on the front half of the ground floor, with residential accommodation to the rear and upper floors. The proposal would convert the commercial floor space into residential use integrated with the remainder of the property.
- 2.02 The existing commercial space would be converted into a living room area, with the existing residential accommodation remaining the same. The application is not proposing to make any structural or external alterations.
- 2.03 The previous proposal (SW/14/0245) was for the Change of use from commercial premises previously a Post Office to residential use. The previous application was very similar to the current planning application and was refused permission for the following reason:

*“The proposal fails to provide sufficient marketing information to demonstrate that there is no demand for the retention of the shop in retail use. In the absence of such information, the proposed use would fail to maintain the vitality and viability of High Street, contrary to Policy B3 of the Swale Borough Council Local Plan 2008.”*

- 2.04 The refusal was subsequently appealed (a copy of the appeal decision is appended to this report). The appeal was dismissed on the grounds that the proposed change of use would result in material harm to the vitality and viability of Milton Regis High Street and there has been insufficient evidence provided to demonstrate that there is a lack of demand for an appropriate use.
- 2.05 The Design and Access Statement submitted with the current application seeks to address the points made in the Council’s reasons for refusal and the Inspector’s appeal decision, and is accompanied by a number of letters and emails from estate agents and a planning agent.

### **3.0 PLANNING CONSTRAINTS**

- 3.01 The site is located in the Milton Regis High Street conservation area, and the building is Grade II Listed.

### **4.0 POLICY AND OTHER CONSIDERATIONS**

Policies E1, E14, E15, B3 and C1 of the Swale Borough Local Plan 2008.

In particular, Policy B3 sets criteria for change of use of retail premises outside core and secondary shopping areas. Planning permission will be granted if it:

- a. is demonstrated by market testing that there is insufficient demand to justify the retention of the unit in retail use;
- b. is demonstrated by market testing that another service or facility, not currently provided in the locality, cannot be provided from the unit;
- c. does not result in the loss of existing residential accommodation or a use important to the community; and
- d. does not lead to a loss of residential amenity.

### **5.0 LOCAL REPRESENTATIONS**

- 5.01 Councillor Clark has requested that the application be reported to the Planning Committee, commenting that new evidence has been submitted, and the application should be considered by Members. He believes that the applicant has a right to have a fair and impartial hearing, and suggests that the application should therefore be considered not by officers but by Members, who all have an interest in the Swale Area to promote all our High Streets.

### **6.0 CONSULTATIONS**

- 6.01 The Environmental Services Manager does not raise objection

### **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 Application papers and correspondence relating to planning applications 15/503038/FULL and SW/14/0245, and appeal reference APP/V2255/A/14/2219483

### **8.0 APPRAISAL**

- 8.01 The proposed use would not give rise to harm to the special character of the listed building, and would have a neutral impact on the conservation area. There would be no significant highway impacts, and I do not envisage harm to residential amenity. The key issue for Members to consider is whether the change of use is acceptable, having regard to Policy B3 of the Swale Borough Local Plan 2008, and whether sufficient information has been submitted to

address the previous reason for refusal and the appeal decision. In order to do so it must be demonstrated that the proposed change of use would not result in material harm to the vitality and viability of Milton Regis High Street. Failing this, it must be demonstrated that there is a lack of demand for either the retention of the retail use or that of another service facility and that the premises have been properly marketed, attracting little or no interest.

8.02 In the appeal decision, at paragraph 8, the Inspector states that

*“The appeal [site] is located in the middle of the High Street, in a small village centre which plays an important role in catering for the day-to-day shopping requirements of the surrounding community. There were a limited number of vacant premises in the centre, but given the total number of units I was of the view the centre appeared reasonably active. The introduction of a residential use, being a non-retail use or non-service facility, at this location in the centre would introduce an inactive frontage in the middle of the commercial frontage to the detriment of the centre. This would erode its retail function and undermine its vitality and viability.”*

No information has been submitted with the application which seeks to demonstrate that this is no longer the case. In my view the Inspector’s comments on this matter are wholly correct. The loss of this retail unit would harm the vitality and viability of Milton High Street, in a harmful manner.

8.03 At paragraph 6 of the appeal decision, the Inspector effectively discounts the marketing carried out prior to August last year. In particular, he concludes that the preceding marketing either related to use only as a post office, or for use as a dwelling (which of course did not have planning permission and in any case does not demonstrate a lack of demand for possible commercial use(s).) I will therefore concentrate solely on the evidence of marketing since the appeal decision, and whether it is considered adequate.

8.03 The application is accompanied by letters from various estate agents, including commercial estate agents, with their comments as follows:

Apex Business Sales – Property not marketed with this firm.

Ashley Tate Ltd – Property not marketed with this firm

Bairstow Eves – The property is currently marketed with this firm, who state that they have yet to secure a viewing. It is however disappointing to note that the current marketing of the property again describes the site as a four bedroom house, and that although reference is made to the commercial use of the retail area, it is not apparently marketed as a commercial/residential premises. An example of this is that, on “Rightmove” it is available to view under residential property for sale, being described as a house, but not under commercial property for sale.

Humberstones – Property marketed with this firm in 2009, but not since.

Ward and Partners – Property marketed with this firm in 2013-2014. Marketed as a dwelling only.

- 8.04 Of the above, all but Bairstow Eves and Ward and Partners refer to the difficulty of attracting a purchaser given the scale of residential use within the property, compared to the commercial floorspace. They also refer to the potential difficulty of purchasers to obtain a mortgage or loan on either or part of the premises. I do not consider the estate agents advice as appropriate evidence of an inability to obtain a mortgage or loan. For the applicant to properly address this issue they should in my view provide evidence from banks, buildings societies or commercial lenders.
- 8.05 Whilst I give the content of the letters some weight, I do not consider them to be determinative here - I note that the letters from Apex and Ashley Tate are based simply on telephone conversations with the applicant, and not a proper appraisal of the premises nor the local market. No such appraisal has been submitted, and the property is currently marketed as a 4 bedroom house.
- 8.06 Given the above, I can only conclude that it has not been adequately demonstrated by market testing that there is insufficient demand to justify the retention of the unit in retail use. No market testing has been carried out. The proposal therefore fails to meet criterion (a) of Policy B3 of the Local Plan as set out above.
- 8.07 No evidence has been submitted to demonstrate, by market testing or otherwise, that another service or facility, not currently provided in the locality, could not be provided from the unit. The proposal therefore fails to meet criterion (b) of Policy B3 as set out above.
- 8.08 The applicant has provided additional information with regard to historic land uses on site. "Originally a residential dwelling. At some point in the mid 20th century the then owner/occupier converted a ground floor front room for use as a retail shop. This was later converted to use as a Sub-Post Office by the present owner/occupier who became the sub-postmaster." Whilst I note that the shopfront is comparatively modern, this application does not seek to replace it (this would require planning permission and listed building consent) and the continued use of the shop for retail or other commercial uses without any alterations would not harm the character of the listed building.

## **9.0 CONCLUSION**

- 9.01 In common with the Planning Inspector who assessed the loss of this unit for commercial purposes last year, I am firmly of the view that the proposed change of use would harm the vitality and viability of Milton Regis High Street. The information submitted with the application is insufficient to demonstrate compliance with Policy B3 of the Local Plan.

9.02 In view of the harm identified, and the lack of information submitted demonstrating that the property is unsuitable for retention for commercial uses, I recommend that planning permission be refused.

**11.0 RECOMMENDATION –REFUSE** for the following reasons:

- (1) The proposal fails to provide sufficient marketing information to demonstrate that there is no demand for the retention of the shop in retail use, or that of another service or facility. In the absence of such information, the proposed use would fail to maintain the vitality and viability of High Street, contrary to Policy B3 of the Swale Borough Council Local Plan 2008.

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.

## APPENDIX A



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## Appeal Decision

Site visit made on 4 August 2014

by **Kenneth Stone Bsc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 August 2014

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**Appeal Ref: APP/V2255/A/14/2219483**

**75-77 High Street, Milton Regis, Sittingbourne, Kent ME10 2AR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr John Stephens against the decision of Swale Borough Council.
  - The application Ref SW/14/0245, dated 29 January 2014, was refused by notice dated 22 April 2014.
  - The development proposed is described as the change of use from commercial premises previously a Post Office to residential use.
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### Decision

1. The appeal is dismissed.

### Procedural matter

2. I have used the site address from the appeal form in the heading above, which differs from that on the application form, as this more accurately describes the site and is used on the Council's decision notice.

### Main Issue

3. The main issue in this appeal is the effect of the proposed change of use on the vitality and viability of the High Street.

### Reasons

4. The appeal site is on the ground floor of a three storey Grade II Listed Building located in the High Street of Milton Regis a small historic settlement that is now a suburb of Sittingbourne. The High Street and surrounding area are within a designated Conservation Area.
5. The property accommodates a commercial area, formerly used as a Post Office, on the front half of the ground floor with residential accommodation to the rear and the upper floors. The proposal would convert the commercial floor space into residential use integrated with the remainder of the property. In respect of this appeal Policy B3 in the Swale Borough Local Plan February 2008 (LP), seeks to maintain and enhance the functioning, vitality and viability of other commercial areas outside of the core and secondary shopping areas by only allowing non-retail uses that meet certain criteria. Those criteria of particular relevance to this appeal require market testing to demonstrate that there is insufficient demand for either the retention of the retail use or that another service or facility, not currently provided in the locality, cannot be provided from the unit.

**APPENDIX A**

Appeal Decision APP/V2255/A/14/2219483

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6. Whilst there are a number of marketing particulars provided by the appellant all relate to the whole premises and rely heavily on the Post Office use. There is little reference to other retail uses or indeed other services or facilities that may be appropriate in this location. The marketing periods are spread over a significant period of time and there are long gaps between some of these, particularly with the most recent marketing which was only commenced in November 2013 after a break of in excess of 3 years. This latter marketing has been on the basis of the whole property as residential and provides little reference to commercial use of this space.
7. The concern that a significant impediment to the use of the commercial area for a viable retail use is the limited space and lack of facilities. However, the marketing has been on the basis of the premises as a whole whereby the operator of the retail unit would also have access to the residential areas. Indeed as there are no physical alterations proposed to this Listed Building this would need to be the case and the commercial floor space would not be provided as an independent unit. I am not persuaded therefore that this is a significant obstacle.
8. The appeal is located in the middle of the High Street in a small village centre which plays an important role in catering for the day-to-day shopping requirements of the surrounding community. There were a limited number of vacant premises in the centre but given the total number of units I wads of the view the centre appeared reasonably active. The introduction of a residential use, being a non-retail use or non-service facility, at this location in the centre would introduce an inactive frontage in the middle of the commercial frontage to the detriment of the centre. This would erode its retail function and undermine its vitality and viability.
9. For the reasons given above I conclude that the proposed change of use would result in material harm to the vitality and viability of Milton Regis High Street and there has been insufficient evidence provided to demonstrate that there is a lack of demand for an appropriate use. Consequently the proposed development would conflict with policy B3 of the LP which amongst other things seeks to maintain and enhance the functioning, vitality and viability of other commercial areas in the built up area of Sittingbourne.

**Other Matters**

10. There are no physical alterations proposed and the Council have concluded that there would therefore be no impact on the Listed Building or the Conservation Area. I see no reason to disagree with their conclusions in this regard and thereby the proposal would preserve the Listed Building, including any features of special architectural or historic interest which it possesses, and the character and appearance of the Conservation Area. However, this does not outweigh the harm that I have identified above.

**Conclusion**

11. For the reasons given above I conclude that the appeal should be dismissed.

*Kenneth Stone*

INSPECTOR