

4.2 - SE/15/00874/FUL Date expired 22 May 2015

PROPOSAL: Change of Use from A1 (shops) to A3/A5 use for restaurant and/or takeaway. Internal alterations.

LOCATION: 123 St Johns Hill, Sevenoaks TN13 3PE

WARD(S): Sevenoaks Town & St Johns

#### **ITEM FOR DECISION**

This application has been referred to the Development Control Committee since the Officer's recommendation is at variance to the view of the Town Council and at the request of Councillor Fleming who is concerned about the impact on the designated neighbourhood centre, the impact on highways safety and the impact on local health.

RECOMMENDATION: That planning permission be GRANTED subject to the following conditions:-

1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

In pursuance of Section 91 of the Town and Country Planning Act 1990.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, Block Plan, 15/1242/03A and 15/1242/02.

For the avoidance of doubt and in the interests of proper planning.

3) No development shall be carried out on the land until a scheme of noise control has been submitted to and approved in writing by the Local Planning Authority. The scheme should assess the worst case scenario noise impact from the proposed extract and ventilation system using methods contained within British Standard 4142:2014, Methods for Rating and Assessing Industrial and Commercial Sound to assess the likely effects of sound on people who maybe inside or outside the dwellings nearby. The development shall be carried out using the approved scheme and all plant shall be maintained in accordance with guidance and advice from the manufacturer.

To safeguard the residential amenity of the occupiers of adjacent and nearby properties as supported by policies EN2 and EN7 of the Sevenoaks Allocations and Development Management Plan. The Local Planning Authority is satisfied that it is fundamental to the development permitted to address this issue before development commences and that without this safeguard planning permission should not be granted.

4) Notwithstanding the information held within the planning application, no development shall be carried out on the land until a scheme of odour control has been submitted to and approved in writing by the Local Planning Authority. Full details of proposed odour control should include:

- a) The position of the flue in relation to neighbouring properties and window openings.
- b) 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.

c) Details of the type of food to be cooked, the cooking time per day; and the type of cooking appliances used.

d) The manufacturer's specification/data sheets for any odour control elements of the system.

Any equipment, plant or process provided or undertaken in pursuance of this condition shall be installed prior to the first operation of the premises. The extraction and treatment 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. The development shall be carried out using the approved materials.

To safeguard the residential amenity of the occupiers of adjacent and nearby properties as supported by policy EN2 of the Sevenoaks Allocations and Development Management Plan. The Local Planning Authority is satisfied that it is fundamental to the development permitted to address this issue before development commences and that without this safeguard planning permission should not be granted.

5) No development shall be carried out on the land until a scheme demonstrating that appropriate facilities for storage and collection of refuse and waste, for the approved use shall be submitted to and approved in writing by the Local Planning Authority. The work specified in the approved scheme shall then be carried out in accordance with the approved details and be retained thereafter.

To safeguard the amenity of the area and the residential amenity of the occupiers of adjacent and nearby properties as supported by policies EN1 and EN2 of the Sevenoaks Allocations and Development Management Plan. The Local Planning Authority is satisfied that it is fundamental to the development permitted to address this issue before development commences and that without this safeguard planning permission should not be granted.

6) The use permitted shall take place on the site only between the hours of 08:00 to 23:00. Outside of these hours, no customer or potential customer shall be permitted to be on the premises and no preparation of food shall take place.

To safeguard the residential amenity of the occupiers of adjacent and nearby properties as supported by policies EN2 and EN7 of the Sevenoaks Allocations and Development Management Plan.

### **Informatives**

1) The applicant should refer to DEFRA guidance document: Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems in relation to the discharge of conditions 3 and 4 above.

2) The applicant is advised to contact the Council's Environmental Health, Food Safety Team at the initial design stage, with respect to advice on compliance with food safety legislation and advice regarding a food registration form.

### **Note to Applicant**

In accordance with paragraphs 186 and 187 of the NPPF Sevenoaks District Council (SDC) takes a positive and proactive approach to development proposals.

SDC works with applicants/agents in a positive and proactive manner, by;

- Offering a duty officer service to provide initial planning advice,
- Providing a pre-application advice service,
- When appropriate, updating applicants/agents of any small scale issues that may arise in the processing of their application,
- Where possible and appropriate suggesting solutions to secure a successful outcome,
- Allowing applicants to keep up to date with their application and viewing all consultees comments on line  
([www.sevenoaks.gov.uk/environment/planning/planning\\_services\\_online/654.asp](http://www.sevenoaks.gov.uk/environment/planning/planning_services_online/654.asp)),
- By providing a regular forum for planning agents,
- Working in line with the NPPF to encourage developments that improve the improve the economic, social and environmental conditions of the area,
- Providing easy on line access to planning policies and guidance, and
- Encouraging them to seek professional advice whenever appropriate.

In this instance the applicant/agent:

- 1) Did not require any further assistance as the application was acceptable as submitted.

#### Description of Proposal

- 1 The application seeks the approval of the change of use of the existing lower ground floor and ground floor of the building from an A1 retail use to an A3 restaurant and/or A5 take-away use. The residential use of the first floor of the building would remain.
- 2 The only external alteration indicated would be that of the installation of a flue to the rear of the building for the extract system to the kitchen area. Internal alterations would comprise the removal and installation of stud walls to alter the internal layout of the ground floor.

#### Description of Site

- 3 The application site comprises an end of terrace property on the western side of St Johns Hill, close to the Bat and Ball junction. The building provides accommodation over three floors but has the appearance of the two storey property from the street to the front. The third floor is within the basement of the building, which is accessed from the side of the property and results from the drop in levels from front to rear.

#### Constraints

- 4 The site lies within the built urban confines of Sevenoaks and the northern St John's neighbourhood centre.

## Policies

### *Sevenoaks District Core Strategy*

5 Policies – LO1, LO2 and SP1

### *Sevenoaks District Allocations and Development Management Plan (ADMP)*

6 Policies – SC1, EN1, EN2, EN7, TLC4 and T2

### *Other*

7 The National Planning Policy Framework (NPPF)

8 The National Planning Practice Guidance (NPPG)

## Planning History

9 SW/2/59/45 - Erection of a garage to replace existing store. Granted 29.04.59

SW/2/63/79 - Construction of a new shop front to existing shop. Granted 06.06.63

## Consultations

### *Sevenoaks Town Council – 30.04.15*

- 10 ‘Sevenoaks Town Council recommended refusal on the following grounds:
1. The loss of a retail unit within a defined neighbourhood centre is contrary to policy TLC4 of the Allocations and Development Management DPD
  2. this application would further the proliferation of fast food services in the local area at the detriment of available retail space, negatively impacting the long term vitality of the area within the plan period
  3. The Town Council had concerns with regards to temporary stopping of cars on the road outside the unit for food collection.’

### *Kent County Council Highways Engineer – 08.05.15*

11 No objection has been raised due to the fact that the site is adjacent to a public car park, which charges only nominal amounts for short stay parking, and noting also the history of comparable applications being granted on appeal on St Johns Hill. A recommendation is made that improvements to the signage for the single-yellow line waiting restrictions be carried out.

### *Sevenoaks Environmental Health Officer – 21.04.15*

12 No objection has been raised subject to the inclusion of conditions requiring a scheme of noise control, a scheme of odour control and details of the storage and collection of refuse and waste. These conditions have been included in the recommendation above (Conditions 3 – 5). Two informatives are also suggested, which have also been included in the recommendation above.

## Representations

- 13 One letter of representation has been received objecting to the proposal on the grounds of a large number of existing cafes/restaurants/take-aways in the area, the character of the area, noise disturbance and litter.

## **Chief Planning Officer's Appraisal**

- 14 The main issues in the consideration of this application include the principle of the development, the potential impact on the character and appearance of the area, the potential impact on residential amenity, the potential impact on highways safety, parking provision and local health. Other issues include sustainable development.

## Main Issues

### *Principle of the development –*

- 15 Policy TLC4 of the ADMP states that within neighbourhood and village centres, as defined in Appendix 8, a range of shops (including Use Class A1) and services (including Use Classes A2, A3, A4 and A5) will be maintained.
- 16 Changes of use between shopping and service uses within neighbourhood and village centres will be permitted where this would not lead to the loss of A1 units serving the day to day needs of the community or required to ensure that the centre is capable of meeting the day to day needs of the community during the plan period. Proposals resulting in a net loss of shopping or service uses will not be permitted unless evidence is provided to the Council to show that the operation of the facility is no longer financially viable and where there are no other realistic proposals for retail or service uses on the site, including through Community Right to Buy.
- 17 The application site does not currently serve as a retail unit as it has been vacant for a number of years and as such does not meet the day to day needs of the local community. In addition, if the use of the building were to be changed, a good number of units would continue to remain in an A1 retail use that would continue to meet the day to day needs of the local population.
- 18 Since this is the case, and the application proposes another service falling within the A use class order of a restaurant and/or take-away use. As such a range of shops and services would be retained within the designated neighbourhood centre preserving the long term vitality of the area.
- 19 I would therefore conclude that the principle of the development is acceptable and the proposal complies with policy TLC4 of the ADMP.

### *Impact on the character and appearance of the area –*

- 20 The NPPF also states that the Government ‘attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.’ (para. 56)

- 21 Policy SP1 of the Core Strategy states that all new development should be designed to a high quality and should respond to the distinctive local character of the area in which it is situated.
- 22 Policy EN1 of the ADMP states that the form of proposed development should respond to the scale, height, materials and site coverage of the area. This policy also states that the layout of proposed development should respect the topography and character of the site and the surrounding area.
- 23 The site falls within the St John's Road Area of the Sevenoaks Residential Character Area Assessment SPD. In proposing new development within the St John's Character Area the SPD states that regular building lines and unified simple roof lines presented to the street should be respected, the harmonious palette of yellow and red brick or white render and original slate roofs should be respected, the rhythm of repeated gable ends, window and door openings and chimneys prevalent in some streets should be retained, and traditional windows and doors and detailing should be retained or reinstated.
- 24 One external alteration to the building is proposed in the form of a flue indicated to be installed on the rear wall of the property to serve the extract system of the kitchen to the proposed restaurant/take-away. This flue would not be seen from St Johns Hill to the front of the site but would be seen from the public car park to the rear of the site.
- 25 However, the rear of the properties that line St Johns Hill offer less to the character and appearance of the area for the reason that properties have been developed in different ways and at different scales. It is also the case that several properties possess similar flues, so it would not be out of character with the area.
- 26 I would therefore conclude that the development would preserve the character and appearance of the area, in accordance with the NPPF, policy SP1 of the Core Strategy and policy EN1 of the ADMP.

*Impact on residential amenity –*

- 27 Paragraph 17 of the NPPF identifies a set of core land-use planning principles that should underpin decision-taking. One of these principles is that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.
- 28 Policy EN2 of the ADMP states that proposals will be permitted where they would provide adequate residential amenities for existing and future occupiers of the development and would safeguard the amenities of existing and future occupants of nearby properties by ensuring that development does not result in excessive noise, vibration, odour, air pollution, activity or vehicle movements along with other amenity related matters.
- 29 Policy EN7 of the ADMP states that proposals which meet the following criteria will be permitted:
- a) development would not have an unacceptable impact when considered against the indoor and outdoor acoustic environment including existing and future occupiers of the development and the amenities of existing and future occupants of nearby properties; and

b) development would not result in unacceptable noise levels from existing noise sources that cannot be adequately mitigated.

- 30 As noted above minimal external alterations would be carried out to the existing building and the restaurant and/or take-away use would only affect the ground floor and lower ground floor of the property. As such it is the case that it would be the actual use itself that would potentially impact upon residential amenity of the occupiers of nearby properties.
- 31 The Council's Environmental Health Officer has commented on the application and has raised no objection to the proposal subject to the imposition of three conditions relating to noise and odour control as well as the storage and disposal of refuse and waste. These conditions would ensure any plant systems installed to deal with noise and odour from the kitchen area would be appropriately designed and maintained to avoid any detrimental impacts on the residential amenity enjoyed by the occupiers of the first floor flat and other nearby residential properties.
- 32 The applicant has not indicated the hours during which the proposed restaurant/take-away would operate. However, to control activity in the form of the coming and going of customers to the property opening hours can be restricted until 11pm in line with other restaurants and take-aways in the neighbourhood centre. This can be controlled by way of a condition, which has been included in the recommendation above (Condition 6)
- 33 This control of opening times would also ensure that vehicle movements along St Johns Hill and in the adjacent public car park, were not outside of what is already established in the local area.
- 34 For these reasons, I am satisfied that the development would preserve residential amenity in accordance with the NPPF and policies EN2 and EN7 of the ADMP.

*Parking provision and highways safety –*

- 35 Policy T2 of the ADMP states that vehicle parking provision, including cycle parking, in new residential developments should be made in accordance with the current KCC vehicle parking standards in Interim Guidance Note 3 to the Kent Design Guide (or any subsequent replacement).
- 36 Policy EN1 of the ADMP requires that proposed development should ensure the satisfactory means of access for vehicles and pedestrians provides adequate parking and refuse facilities.
- 37 No parking provision is made as part of the application. However, a public car park exists to the rear of the site where customers can safely park and visit the restaurant and/or take-away. This is also an arrangement for the other retail units within the neighbourhood centre.
- 38 In terms of the possibility of cars trying to park on the double and single yellow lines that run along this part of St Johns Hill, this is a matter for action from the Council's Civil Enforcement Officers. The County Highways Engineer recommends that the restrictions should be made clearer. However, this is a matter for Kent County Council since the District Council simply enforces the restrictions put in place by the County Council. Kent Highways have raised no objection to the proposal.

- 39 Overall, the proposal would be acceptable in terms of parking provision and highways safety, and would comply with policy T2 and EN1 of the ADMP.

*Local health –*

- 40 There is no specific development plan policy which relates directly to local health. However, case law has within the last 5 years indicated that health can be a material consideration to a planning application. What weight is given to this matter is for the decision maker to decide.
- 41 The proposal is for a restaurant and/or take-away in an area where a number of existing similar uses are found. For this reason I do not believe that an additional similar use would cause demonstrable harm to local health to justify refusal particularly since the use could be solely for an A3 restaurant use .
- 42 Weighing up this matter as a material consideration and the circumstances relating to the application and the surrounding area I would conclude that the proposal would not result in a detrimental harm to the health of the local population.

Other Issues

*Sustainable development –*

- 43 The NPPF states that at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision taking (para. 14). For decision-taking this means approving development proposals that accord with the development plan without delay and where the development plan is absent, silent or relevant policies out of date, granting of permission unless:-
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole;
  - specific policies in this framework indicate development should be restricted; or
  - material considerations indicate otherwise.
- 44 In my opinion, the proposed scheme fully accords with the development plan, and I have explained this in detail above. It follows that the development is appropriate and there would be no adverse impact in granting planning permission for the development.

**Conclusion**

- 45 I consider that the proposed development would preserve the character and appearance of the area, residential amenity, highways safety and local health and would provide sufficient vehicle parking. Consequently the proposal is in accordance with the development plan and therefore the Officer's recommendation is to approve.



## **Background Papers**

Site and Block plans

Contact Officer(s):

Mr M Holmes Extension: 7406

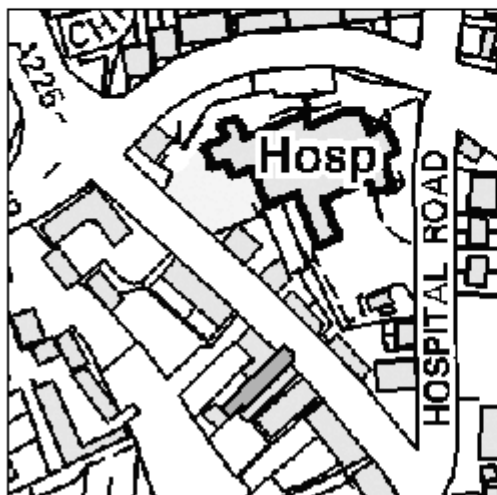
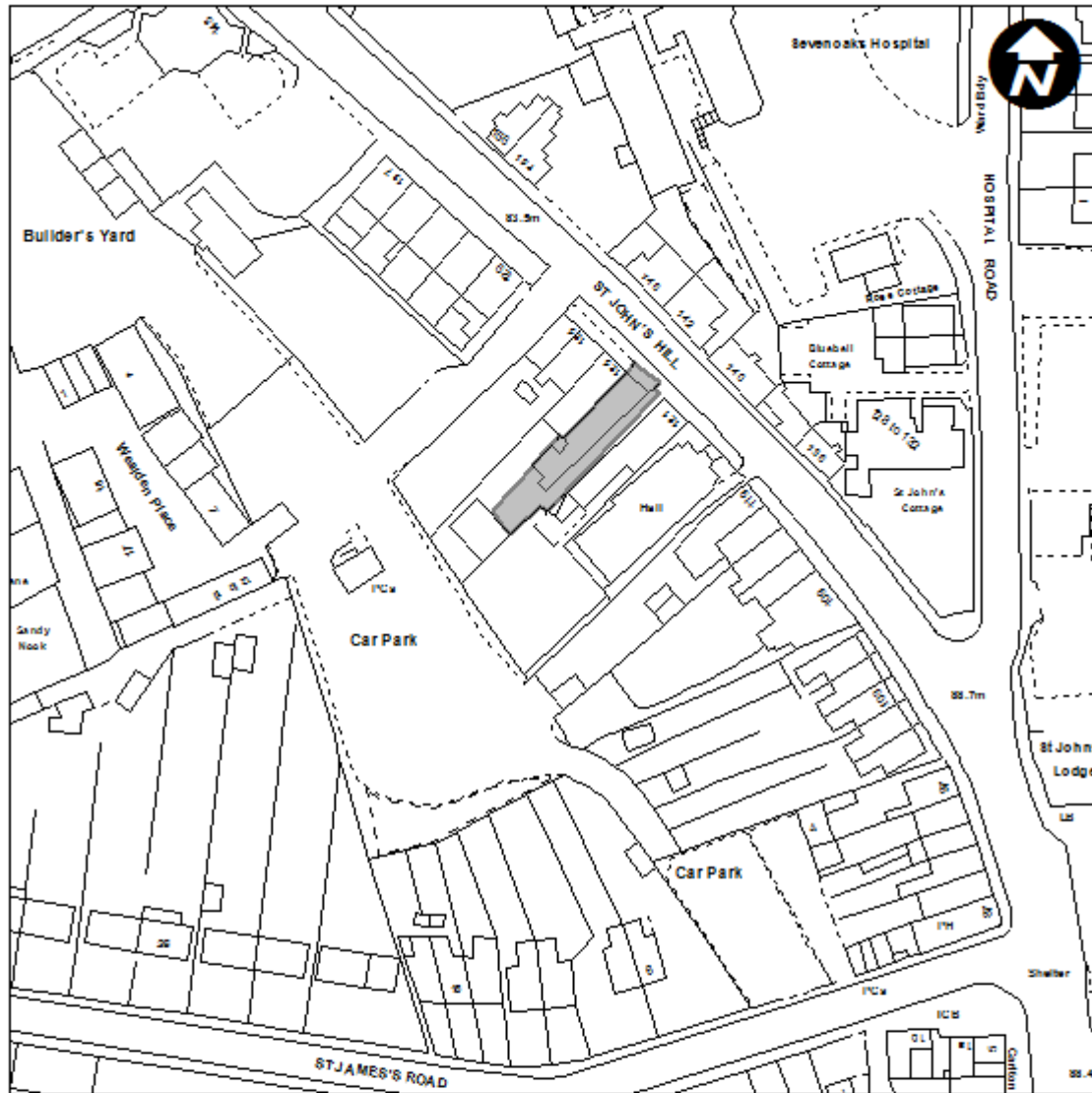
**Richard Morris**  
**Chief Planning Officer**

Link to application details:

<http://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=NLOCR7BKJ4B00>

Link to associated documents:

<http://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=NLOCR7BKJ4B00>



# Site Plan

Scale 1:1,250

Date 01/06/2015



**Sevenoaks**  
DISTRICT COUNCIL

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Ordnance Survey 100019428.

Block Plan

