

4.1 23/03279/FUL

Revised expiry date 16 February 2024

Proposal: To divide the existing supermarket unit into 3 separate Class E Commercial, Business and Service units, consisting of a gym at no. 30, a barber at unit 1, 32 and a hair and beauty salon at unit 2, 32.

Location: Co-op, 30 - 32 Hever Road, West Kingsdown Kent TN15 6HD

Ward(s): Fawkham & West Kingsdown

Item for decision

The application has been called to Development Management Committee by Councillor Bulford on the grounds of the impact on neighbour amenity and parking.

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 and details: Block Plan (Map.002), Proposed Floor Plans (PR.001 Rev2) and Proposed Elevations (PR.002 Rev2).

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

National Planning Policy Framework

In dealing with this application we have implemented the requirements in the National Planning Policy Framework to work with the applicant/agent in a positive, proactive and creative way by offering a pre-application advice service; as appropriate updating applicants/agents of any issues that may arise in the processing of their application and where possible and if applicable suggesting solutions to secure a successful outcome. We have considered the application in light of our statutory policies in our development plan as set out in the officer's report.

Description of site

- 1 The application site comprises approximately half of the 26-32 Hever Road parade of shops, approved in 1966. The application site is for units 30 to 32, which were formerly occupied by Co-operative Food before the store re-located to the eastern end of the Hever Road.
- 2 The site is part of the western-most block within the long parade of commercial units made up of two blocks. The site is surrounded by residential development, including flats above the units.

Description of proposal

- 3 Permission is sought to divide the ground floor of 30-32 Hever Road, formerly occupied by the Co-operative Food, into three separate units all within the same use class. The proposal includes the subdivision of 32 Hever Road into two units. In turn, this results in a requirement for new entrances to the units and a subsequent requirement for planning permission, which would not otherwise be required for the above changes to the occupation of the unit.

Relevant planning history

- 4 The history relevant to the site (excluding various advert consent applications) are:
- TH/5/65/124 - Erection of two storey block of 4 shops with flats over
 - TH/5/66/404 - Erection of two storey block of 4 shops with flats over
 - 00/01528/FUL - Install security shutters to shop front - Granted
 - 04/02365/FUL - Installation of ATM - Granted
 - 13/01859/FUL - Formation of new entrance in existing shop front with colour variations to the entrance. Existing entrance door retained as an exit and repositioning of ATM. Formation of a new compound area at the rear in metal frame with a flat roof and timber finish - Granted
 - 13/02116/FUL - Installation of new mechanical plant at the rear of the property- Granted
 - 16/02909/FUL - Removal of the existing free standing chiller unit and timber store to the rear yard of the existing Co-op and installation of a new Type C Secure Store including minor civils works and new refrigeration plant and 2no. condensing units - Granted
- 5 Adjacent relevant applications:
- 23/01534/FUL - Removal of former car parking area and erection of 4 dwellings with associated drive and car parking - Granted

Policies

- 6 National Planning Policy Framework (NPPF)

Paragraph 11 of the NPPF confirms that there is a presumption in favour of sustainable development, and that development proposals that accord with an up-to-date development plan should be approved without delay.

Paragraph 11 of the NPPF also states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless:

- application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (footnote 7); or

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 7 Footnote 7 relates to a variety of designations, including SSSIs, Green Belt, AONBs, designated heritage assets and locations at risk of flooding.
- 8 Core Strategy (CS)
- LO1 Distribution of Development
 - LO7 Development in Rural Settlements
 - SP1 Design of New Development and Conservation
- 9 Allocations and Development Management (ADMP)
- EN1 Design Principles
 - EN2 Amenity Protection
 - T1 Mitigating Travel Impact
 - T2 Vehicle Parking
 - T3 Provision of Electric Vehicle Charging Points

Constraints

- 10 The following constraints apply:
- Village confines of West Kingsdown

Consultations

- 11 West Kingsdown Parish Council:
- 1) The usage proposed will mean car parking required in some cases up to 1 – 2 hours e.g. Gym and Ladies Hairdressing. Until recently there was a facility for parking for 20+ cars at the rear behind this site which has been lost due to a recent planning approval for housing.
- 12 We have also lost three road side spaces until midday for deliveries with no new spaces replacing them. There is limited parking in the service road in front of the shops parallel to parking on the highway limited to 1 hour. There are double yellow lines at each end of this facility and single yellow lines beyond. Parking in these two places is already at maximum at peak times. This development can only exacerbate the parking problem.
- 13 2) Noise – the Gym will no doubt have music pumped out and the noise generated by the apparatus into the Early/late evening to the detriment of the residents nearby and in the flats above.
- 14 The site plan gives wrong information as to parking indicated as Axstane House. Children’s Nursery.
- 15 a) this facility is no longer in situ and has been replaced by a new Co-Op shop with 4 existing spaces at the rear and some public parking.

- 16 b) the parking area indicated on the plan for Axstane House is not for public use and is restricted to residents of the flats and shop owners.
- 17 SDC Environmental Health:
- 18 Although the use is currently commercial, there is the potential for additional noise to be generated by the proposed uses - in particular the gym. It's noted on the application for that opening hours are proposed as 07:00 to 21:00 7 days a week but it's not clear if these hours relate to all 3 uses or just the gym. The hours do seem excessive, particularly on Sundays. Looking at Google maps, it appears that there are residential flats above all 3 units and also the adjacent units. Gyms have the potential to be very noisy - from weight drop noise, impact noise and also amplified music.
- 19 If planning permission is granted it is requested a Noise Impact Assessment be conditioned. In addition a condition requiring a Construction and Environmental Management Plan to be submitted is recommended.

Representations

- 20 8 letters of objection have been received relating to the following issues:
- Lack of parking following the approval for four houses to the rear.
 - Gym would require longer term parking, adding to the pressures the area already faces.
 - Not enough parking for current shops, let alone gym, barbers and hair salon.
 - Already hairdressers in the village.
 - Would have been beneficial to have an upmarket restaurant in the area instead.
 - Issues with parking on double yellows outside new Co-Op store.
 - Car park to the rear of Co-Op is not large enough.
 - Issues with buses and other large vehicles passing with the extent of on street parking.
 - Concerns regarding noise from the units, particularly the gym.
 - No shower facilities etc. on the proposed plans
- 21 3 letters of support have been received relating to the following matters:
- Strongly support having a new gym and salon in the area.
 - Support the proposal to have a gym in this location as only other facility is Brands Hatch Hotel which requires driving to.
 - Development likes this are vital for revitalising the area.
 - Opposing this sort of development hinders the chance for growth and regeneration.
- 22 1 letter of neither objection nor supporting the application has also been received relating to the following issues:
- Will there be sound proofing for the residents above the units.
 - Is there sufficient parking for the customers and employees of the businesses.
 - Opening hours clarification.

Chief Planning Officer's appraisal

- 23 The main planning considerations are:
- Principle of development;
 - Impact on the character of the area;
 - Residential Amenity;
 - Parking and Highway safety;
 - Other issues

Principle of development

- 24 The proposals would result in a change in occupancy of these units from a shop to use as a gym, a salon and barbers. However, the uses proposed fall within the same Use Class as the former shop; Use Class E as defined within the Town and Country Planning (Use Classes) Order 1987 (as amended).
- 25 As the proposals do not involve a change from one Use Class to another, planning permission is not required for the premises to be occupied by the proposed uses.
- 26 Permission is required for the alterations to the shop front to no. 32, which would provide two separate entrances.
- 27 Policy LO1 of the Core Strategy seeks to direct development to the built confines of existing settlements, the application site is located within the settlement confines of West Kingsdown and is therefore acceptable in this regard.
- 28 Policy L07 states that the Council will support and encourage innovative proposals to improve provision of services and facilities to serve the local community, subject to any development being of a scale and character appropriate to the area.
- 29 An assessment as to whether the proposal would protect the character of the area is carried out later in the report, using the design criteria of policy EN1 of the Allocations and Development Management Plan. However, in terms of quantum of development, the proposal is simply for the re-use of the vacant units since the Co-op relocated to the other end of the parade of shops. The proposed shopfronts would help facilitate this and ensure that these units are retained in a use appropriate to this location, which would help improve the provision and range of services to serve the local community and maintain the vibrancy and vitality of this local centre. In consequence, the proposal complies with policies LO1 and LO7 of the Core Strategy and the proposals are considered acceptable in principle.
- 30 As an aside, it might be worth noting that Class E, of the Town and Country Planning (Use Classes) Order 1987 (as amended), encompasses a range of uses (some of which could be more impactful than the proposed uses). These include, but are not limited to, café's & restaurants, offices, banks and other financial services, indoor sports, children's nursery, and even some form of light industrial uses that can be carried out in residential areas.

Impact on the character of the area

- 31 Policy SP1 of the Core Strategy and EN1 of the Allocations and Development Management Plan outline 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. Policy EN1 also states that the form of proposed development should be

compatible in terms of scale, height, density and site coverage with other buildings in the locality. The design should be in harmony with adjoining buildings and incorporate materials and landscaping of a high standard.

- 32 It is proposed to re-use the now vacant Co-op store for a gym, salon and barbers. The Co-op store comprised numbers 30 to 32 of the Hever Road shops, it is proposed to subdivide the eastern end of the units (number 32) to form the Salon and Barbers with the larger portion of the unit left for the gym. Externally, one of the accesses/doorways for the former Co-Op store will remain and serve the gym and only advertising above the store front will change. As for the smaller units, the one entrance will be split into two and both units will feature their own advertisement above (which would be subject to separate consent).
- 33 As outlined above, only the subdivision requiring works to the frontage to facilitate the entrances requires planning permission. These works are considered minor and in keeping with the existing fenestration of the parade of shops. Overall, the proposed external works are considered to accord with policy EN1 of the Allocations and Development Management Plan and SP1 of the Core Strategy.

Residential amenity

- 34 Policy EN2 of the Allocations and Development Management Plan requires proposals to provide adequate residential amenities for existing and future occupiers of the development. Amongst other things, the policy seeks to protect occupants of nearby properties from noise pollution.
- 35 In this instance there is a potential for impact from noise/vibration from the Gym in particular. The units are (as is the case for the majority of the shops) located below residential flats above. The building is under one ownership, and it is understood that the flats are rented. The Planning Agent has highlighted that it would be in the best interest of the applicant (site owner) to maintain and preserve relationships with the residents/tenants of the properties above.
- 36 As highlighted throughout this report, changes of use within Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) do not require permission. The aim of Central Government when creating Class E in 2020 was to allow high streets and village centres like this to be more flexible and better adapt to a changing economic climate by allowing premises to move more freely between different uses, with the implication that such uses are considered by Government to be acceptable in residential areas.
- 37 The Environmental Health Officer has recommended a Noise Impact Assessment condition be included with any grant of permission. The proposal is for minor works to subdivide the units, and as outlined throughout this report there is no requirement for planning permission for a gym to occupy the unit(s).
- 38 Accordingly, it is necessary to ascertain such a condition meets the test of the Planning Practice Guidance which states:
- “the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:
1. necessary;
 2. relevant to planning;
 3. relevant to the development to be permitted;

4. enforceable;
5. precise; and
6. reasonable in all other respects”.

- 39 As the development only relates to the subdivision of the units and not the use (which does not require permission) a noise condition is not reasonable in terms of test 3 above. The applicant has agreed to a condition, however an unreasonable condition does not become reasonable because an applicant suggests it or consents to its terms. The condition must always be justified on its planning merits. In this case, such a condition would not be justified on the planning merits.
- 40 It would be unreasonable for the Council to impose a condition for a Noise Impact Assessment as it does not relate to the development. As for opening hours, the application form refers to the hours 7am to 9pm (7 days a week). The former use of the units as a Co-Op was operating on hours of 7am to 10pm. There is no condition for the control of operating hours on the building dating back to the original permission in 1966. Therefore, it would also be unreasonable to include a time restriction condition as it does not relate to the development i.e. the physical works to subdivide the building.

Parking and highway safety

- 41 Paragraph 115 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 42 There have been numerous concerns raised regarding the parking for the development, the gym in particular. The starting point is to consider whether the proposed use of the units is greater than that of the previous use as a Co-op store. It is considered that the Barbers and Hair Salon would only generate a small amount of traffic and significantly less than the store. Moreover, the village centre location would attract many visitors by foot. As for the gym, given its modest scale it is unlikely to generate a significant level of traffic and again is easily accessible via walking and public transport. Whilst it is noted that the gym may result in parking for longer periods than the supermarket, this would not, in the context of paragraph 115 of the NPPF, justify a refusal on highway grounds.
- 43 It is also worth noting the potential impact on parking from other uses that could lawfully use the premises as an alternative to the gym. A children’s nursery for example could generate more traffic, in particular at drop off and pick up times. Light industrial uses, which Class E also permits, could see a greater level of larger goods vehicles visiting the site.
- 44 It is accepted that the area already features on street parking, and the representations refer to parking on double yellow lines. The proposed re-use of a now closed unit will inevitably lead to some increase, albeit not significant as outlined above, particularly in regards to paragraph 115 of the NPPF.

Other issues

- 45 There have been other matter raised through representations, including:
- Need for gym in this location.
 - Need for salon/barbers in this location.
 - Would be better to have a restaurant.
 - No shower facilities etc. shown on the plans.

- 46 Numerous comments regarding the need for a gym, salon and barbers in this location have been received. This is not a matter for the determination of the application as the Town and Country Planning (Use Classes) Order 1987 (as amended) does not stipulate/restrict new uses if there are similar ones in the area already. Moreover, the granting of this application would not restrict the uses to a gym, salon, barbers etc. going forwards, as future occupiers within Use Class E would still be able to occupy the units without planning permission.
- 47 With regard to the plans not detailing shower facilities etc. for the gym, as this relates to the internal layout of the unit it is not required as the planning permission does not restrict the internal layout, rather in this case it is simply for the subdivision of the units, specifically changes to the fenestration/entrances to the units.

Community Infrastructure Levy (CIL)

- 48 The proposed development is not CIL liable as there is no increase in floorspace.

Conclusion

- 49 The proposed development is considered acceptable in principle, the re-use alone does not require planning permission and the associated works will preserve the character of the area. The development and use will preserve the amenity of neighbouring residents and there will be no loss of highway safety. The development is considered to accord with policies LO1 and LO7 of the Core Strategy, policies EN1 and EN2 of the Allocations and Development Management Plan, the NPPF and relevant supplementary planning guidance.

Recommendation

- 50 It is therefore recommended that this application is granted.

Background papers

- 51 Site and Block Plan

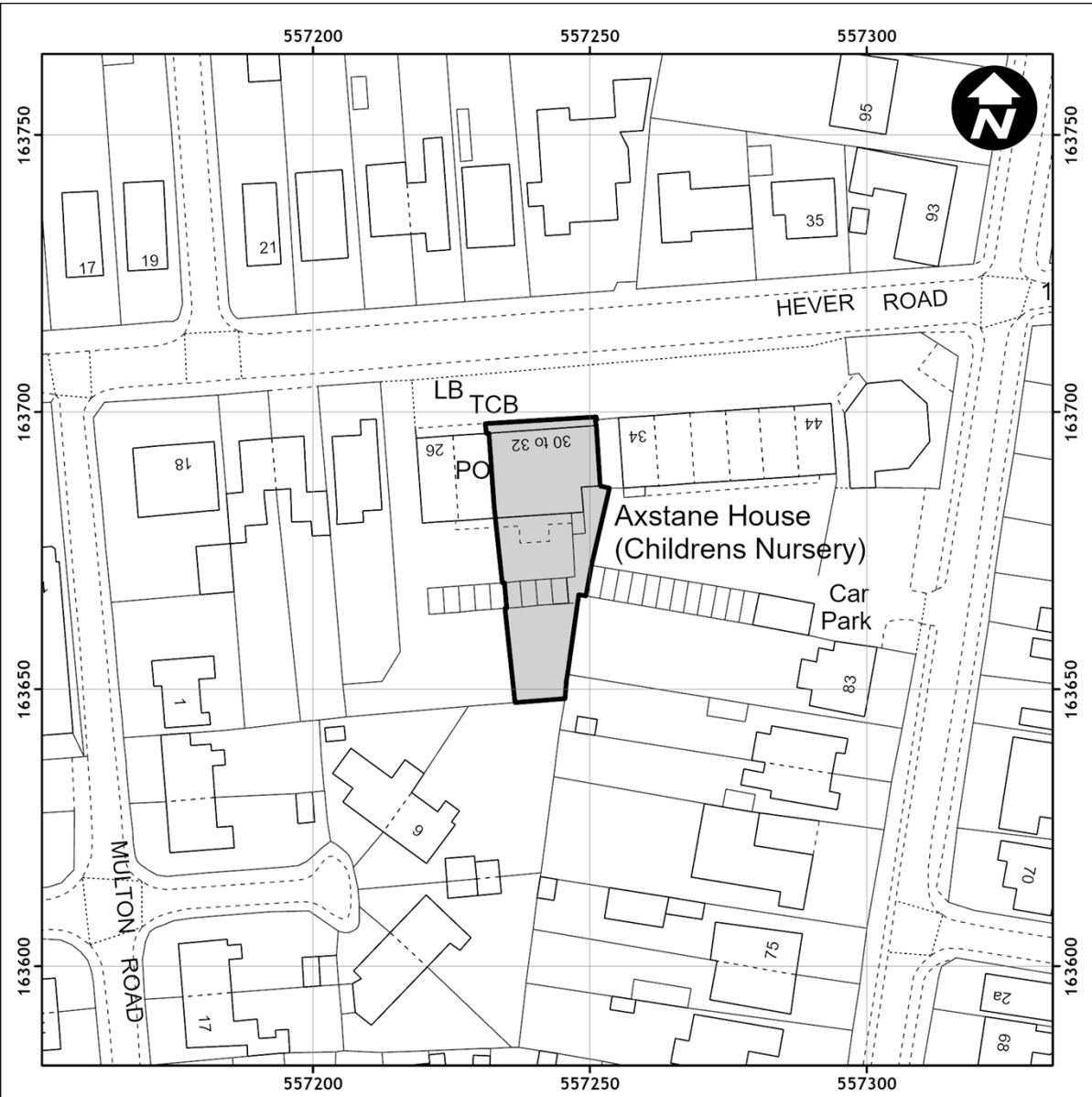
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[Link to application details:](#)

[Link to associated documents:](#)



Site Plan

Scale 1:1,250
 Date 18/01/2024



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 Ordnance Survey AC0000822250

BLOCK PLAN

