

## OFFICERS REPORT

**Application No:** Y17/0006/PA  
**Location:** 35 High Street Hythe Kent CT21 5AD  
**Proposal** Notification for prior approval for a Change of Use from Shops (Class A1) to restaurants and cafes (Class A3)

### ASSESSMENT

Performance data:-

Date application valid: 02.03.2017

Applicable 8/13/16 week target date: 27.04.2017

Planning Performance Agreement (PPA) or Planning Extension Agreement (PEA) ? N/A

If Yes, revised 8/13/16 week target date: n/a

Is the application being determined after 26 weeks without a PPA or a PEA? n/a

### SITE VISIT

Carried out site visit on 09.03.2017.

### SITE

The application property is located within the 'shopping area' of Hythe as identified on the Local Plan constraints map. The site is on the northern side of Hythe High Street closer to the western end.

The property was until recently in use as a florist but has just been vacated. The adjacent property to the eastern side is cafe and to the western side is a pharmacy and post office.

The property is also within an Area of Archaeological Potential, Hythe High Street and Vicinity Conservation Area and an area of known land instability.

The attached property to the west (Post Office - no. 33) is a listed building.

The EA flood maps show the site as being outside of a Flood Zone, at low risk of flooding and the Shepway SFRA 2115 (adjusted for climate change) shows the site outside of any flood risk. The site is not within a Ground Water Protection Zone on the EA flood maps.

### HISTORY

Y02/04774/SH Change of use of ground floor from doctors surgery to retail use.  
(Approved)

86/1316/SH CHANGE OF USE OF GROUND FLOOR SHOP TO DOCTORS SURGERY  
(Approved)

### PROPOSAL

Notification for prior approval for a Change of Use from Shops (Class A1) to restaurants and cafes (Class A3). Internal building operations are proposed to facilitate the change of use.

### CONSULTATION RESPONSES

Consultation responses are available in full on the planning file. The main points raised are summarised below.

Hythe Town Council - no objection

## REPRESENTATIONS

4 letters have been received objecting/ raising concern regarding the application. The majority of the comments raised refer to matters that cannot be considered under a prior approval application such as this. However, objectors have raised concern regarding the loss of a retail unit and the impact this would have on the vitality/ viability of the area.

## PUBLICITY

Neighbours notified by letter. Expiry date 28.03.2017

Site notice displayed. Expiry date 03.04.2017

## RELEVANT POLICIES

N/A

## APPRAISAL

The proposal falls under Schedule 2, part 3 Class C 'Retail, betting office or pay day loan shop or casino to restaurant or cafe'.

GPDO reads: "Permitted development

C. Development consisting of—

(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,...

to a use falling within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order, and

(b) 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."

In this case the proposed use is as an extension of the seating area of the adjacent restaurant to the east - 37-39 High Street, which is currently a separate building and planning unit. In order to facilitate the change of use of the application unit an opening in the internal dividing wall between the existing restaurant in the neighbouring building and the application unit is proposed. No details of any additional bin storage facilities/extraction equipment or other works have been detailed in the submission. However, within the application form it is advised that the waste storage and handling will all be in the existing restaurant at 37-39 High Street (the neighbouring unit). As no extraction equipment has been detailed, and the proposed use is an extension to the neighbouring restaurant, it is assumed the kitchen and fume extraction will take place as existing at 37-39.

The GPDO states that there are a number of situations where Development is not considered to be 'permitted'.

"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; IN THIS CASE IS ABOUT 66SQM.

- (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; NO
  - (ii) a safety hazard area; or NO
  - (iii) a military explosives storage area; 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

However, in this case the applicant is seeking to incorporate a separate unit of accommodation into the existing restaurant which is clearly a separate planning unit with no access into the existing unit. The change of use would provide a seating area for the restaurant use in the adjoining unit and would not have any of its own facilities required for a cafe or restaurant use in its own right eg a serving counter, cooking facilities etc. As such, it is not considered the proposed seating area would result in a change of use to an A3 use as due to being a separate planning unit it would simply be a seating area, not a cafe or restaurant. It would only become such a use in conjunction with use of the accommodation in the neighbouring planning unit. In addition, it is not possible to change the use of this unit as ancillary accommodation to the neighbouring unit without carrying out building operations to create internal access, which also isn't permitted under Class C (b) which only allows for the

(b) 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.

of which this proposal does not fall under either category.

## RECOMMENDATION

Prior approval be refused as the proposal does not result in a change of use falling within A3 to the Town and Country Planning (Use Classes) Order 1987 and even if it was considered to it also results in building operations that are not permitted under Class C (b) of Part 3 of the GPDO 2015 (as amended).

## HUMAN RIGHTS

I have also taken into account the human rights issues relevant to this application. In my view, the Assessment section above and the Recommendation represents an appropriate balance between the interests and rights of the applicant (to enjoy his land subject only to reasonable and proportionate controls by a public authority) [and the interests and rights of those potentially affected by the proposal (to respect for private life and the home and peaceful enjoyment of their properties)] and the wider public interest.

Case Officer:

Report and draft decision notice completed and passed to senior officer.

Name: B Lennon    Position:    Planner    Date: 27.04.2017

Report and draft decision notice amended (if appropriate)

Name:    Position:    Date:

Senior Officer

Report not agreed. Details of further work required as follows:

Name:                      Position:                      Date:

Report and draft decision notice agreed and file passed to admin to issue decision.

Name: C Dethier                      Position: DM Team Leader      Date: 27/4/17