

Application Number: 16/10689 Full Planning Permission

Site: 15 ST THOMAS STREET, LYMINGTON SO41 9NB

Development: Use as hot food takeaway (Use Class A5); extraction/ventilation equipment; external alterations; shopfront; rear door; shed

Applicant: Yasmin Reilly

Target Date: 19/09/2016

Extension Date: 31/08/2016

1 REASON FOR COMMITTEE CONSIDERATION

Contrary to Town Council view

2 DEVELOPMENT PLAN AND OTHER CONSTRAINTS

Built-up area
Town Centre Boundary
Lymington Conservation Area
Primary Shopping Area
Archaeological Site

3 DEVELOPMENT PLAN, OBJECTIVES AND POLICIES

Core Strategy

Objectives

1. Special qualities, local distinctiveness and a high quality living environment
4. Economy
6. Towns, villages and built environment quality

Policies

CS2: Design quality
CS3: Protecting and enhancing our special environment (Heritage and Nature Conservation)
CS5: Safe and healthy communities
CS10: The spatial strategy
CS20: Town, district, village and local centres
CS24: Transport considerations

Local Plan Part 2 Sites and Development Management Development Plan Document

DM1: Heritage and Conservation
DM15: Secondary shopping frontages

4 RELEVANT LEGISLATION AND GOVERNMENT ADVICE

Section 38 Development Plan
Planning and Compulsory Purchase Act 2004

5 RELEVANT SUPPLEMENTARY PLANNING GUIDANCE AND DOCUMENTS

Lymington Local Distinctiveness
Shopfront Design Guide

6 RELEVANT PLANNING HISTORY

- | | | |
|-----|---|---------------------------|
| 6.1 | 11/98123:
Variation of condition 4 of planning permission 11/97285 to read "activated carbon units by Longar Industries with TCBB X2 axial fan as detailed in literature" | Granted: 2 March 2013 |
| 6.2 | 12/98155:
Variation of condition 5 of planning permission 11/97285 to read "the food prepared at the premises shall be grilled meats, potato products pizzas, salads and associated items" | Granted: 2 March 2013 |
| 6.3 | 11/97285:
Use as hot food take away (Use Class A5) | Granted: 14 November 2011 |

7 PARISH / TOWN COUNCIL COMMENTS

Lymington and Pennington Town Council: Recommend refusal - Support the observations of the Case Officer and note the issues of proposed use of rear door raised by neighbour.

8 COUNCILLOR COMMENTS

No comments received

9 CONSULTEE COMMENTS

- 9.1 Land Drainage: no comment
- 9.2 Hampshire County Council Highway Engineer: no objection (no conditions)
- 9.3 Environmental Health: no objection subject to conditions
- 9.4 Conservation Officer: no objection to amended plans
- 9.5 Archaeologist: no objection subject to condition/ informative

10 REPRESENTATIONS RECEIVED

- 10.1 5 letters received raising the following comments/ objections;
 - The restaurant has failed twice as La Primevera & The Buffalo Steak House;
 - Food hygiene in respect of previous eateries has been poor thus the question is posed regarding the scope of the conversion works proposed;

- There are several takeaways in Queen Street open until late and another is not required;
- The property backs onto the pub grounds and a rear door would potentially open onto pub grounds;
- Objection to removal of the wooden shopfront;
- There is no right of way over the Kings Arms land which allows access for deliveries or rubbish removal and the Kings Arms would not grant such access. The existing gate is an informal arrangement for emergency use only. Further, the entrance gates to this area are only open during pub trading hours.

11 CRIME & DISORDER IMPLICATIONS

n/a

12 LOCAL FINANCE CONSIDERATIONS

Local financial considerations are not material to the decision on this application.

13 WORKING WITH THE APPLICANT/AGENT

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council take a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome.

This is achieved by

- Strongly encouraging those proposing development to use the very thorough pre application advice service the Council provides.
- Working together with applicants/agents to ensure planning applications are registered as expeditiously as possible.
- Advising agents/applicants early on in the processing of an application (through the release of a Parish Briefing Note) as to the key issues relevant to the application.
- Updating applicants/agents of issues that arise in the processing of their applications through the availability of comments received on the web or by direct contact when relevant.
- Working together with applicants/agents to closely manage the planning application process to allow an opportunity to negotiate and accept amendments on applications (particularly those that best support the Core Strategy Objectives) when this can be done without compromising government performance requirements.
- Advising applicants/agents as soon as possible as to concerns that cannot be dealt with during the processing of an application allowing for a timely withdrawal and re-submission or decision based on the scheme as originally submitted if this is what the applicant/agent requires.
- When necessary discussing with applicants/agents proposed conditions especially those that would restrict the use of commercial properties or land when this can be done without compromising government performance requirements.

In this case, the agent has been contacted and revised plans have been submitted allowing the retention of the existing shopfront and a smaller external store.

14 ASSESSMENT

Introduction

- 14.1 The application seeks planning permission for the change of use of 15 St. Thomas Street, Lymington to allow a hot food take away (Class A5); it is understood that this would comprise a pizza take away. The take away would be open between 10am and 11pm daily and would provide approx. 35 jobs (full and part time). The proposal would also allow the creation of a level access to the premises, extraction equipment and the siting of an external store.
- 14.2 The application relates to the ground floor of a 3 storey terrace building on the south side of St. Thomas Street. The site is within the Lymington Conservation Area. The site also falls within the Primary Shopping Area and is designated as a Secondary shopping frontage.
- 14.3 Amended plans form a part of this planning application allowing retention of the existing shopfront (a replacement shopfront was originally proposed) and a smaller external store building to the rear.

Planning History

- 14.4 The premises are currently empty but benefit from an A3 (restaurants and cafes) use having been previously occupied by La Primavera; it is understood that this Italian restaurant closed in September 2015.
- 14.5 Previously planning permission was granted for an A5 use on 14 November 2011 (ref 11/97285). This permission was subject to 7 conditions inclusive of conditions restricting use to pizza products (subsequently varied under 12/98155) and limiting the opening hours to between 10.00 hours and 23.00 hours.
- 14.6 A hot food take away (use class A5) can lawfully convert to a restaurant (use class A3) without the need for planning permission and therefore the current use of the site as a restaurant is lawful.

Principle of Development (Change of use)

- 14.7 The premises lies within a secondary shopping frontage the policy for which cites that the development, improvement or expansion of retail and appropriate non-retail uses will be permitted in addition to the change of use of retail premises to appropriate non-retail uses. 'Appropriate non-retail uses' in town centres and local shopping frontages include cafes, bars and restaurants.
- 14.8 It is considered that this current application would accord with this policy given that the proposal would be likely to generate similar customer activity/business. It would also be more difficult to withhold planning permission given the relatively recent planning permission that was granted for an A5 use.
- 14.9 For the above reasons, and despite the concerns raised with regards to the need for a further late night take away, it is considered that there can be no sustainable objection to this proposal.

Visual Amenity/ Conservation Area

- 14.10 Although unlisted, 15 St Thomas Street is within the historic core of the Lymington Conservation Area and retains features of note; in particular the shop front with its slim fascia and detailed tops to the window frames that include curved sections and moulded frames and cills. This style of decoration is a common feature within windows in the Lymington Conservation Area and which contribute to the character of the Conservation Area. Further, the shop front contains a pleasing recessed door which breaks up the frontage and is mentioned within the Shop front design guide as a feature to be preserved within Conservation Areas.
- 14.11 Comments from the Conservation Officer advise that the change of use raises no objection, while the proposals for the rear of the building show no changes to the historic fabric and would not be visible from the street scene. The extractor fans would be slightly larger but would not affect the character of the Conservation Area or the character of the surrounding buildings. Subject to the grills for the extractors being painted black and retained as such in perpetuity, there is no conservation based objection to this element of the scheme, with these elements of the proposal also considered acceptable from a visual amenity viewpoint.
- 14.12 The originally proposed changes to the shopfront with a new shopfront proposed were considered to be wholly unacceptable and as such, amended plans have been received allowing the retention of the existing shopfront with the only change now being the removal of the entrance step to provide a level access. The agent has clarified that the existing door would be retained with 90mm of timber added to the bottom and on this basis, the Conservation Officer advises that this element of the proposal is considered to be acceptable with no associated condition required.
- 14.13 The replacement shed/ store to the rear would be timber clad, well screened by the existing boundary walls and would allow removal of the existing structure which is in a poor state of repair. Nevertheless, there was concern with regards to the size of the building which is in a position that would typically provide for a smaller ancillary outbuilding. Further to discussions with the agent, the size of this building has been reduced and this helps to address these concerns, albeit a further reduction would have been welcomed. Nonetheless, given the more discreet position of the building, it is considered that any associated objection would be difficult to sustain.

Environmental Health

- 14.14 The applicant has submitted a noise report further to initial objections raised by the Environmental Health Officer in relation to mitigating noise/ vibration from the proposed change of use. In the event that planning permission is granted, the Environmental Health Officer has requested a condition requiring that the noise and vibration mitigation schemes be implemented and maintained.
- 14.15 Further conditions are requested to ensure that the ventilation system is installed in accordance with these additional submitted details and also limiting the food prepared to pizza/ pasta type dishes given that

the ventilation system abatement equipment is commensurate with mitigating the cooking odours from this type of food. It is noted that this reflects the condition applied at the time of the previous planning permissions.

- 14.16 Conditions are also requested in respect of opening hours (as per the previous planning permission and the application details) and deliveries. Subject to these conditions, no objection has been raised.

Residential Amenity

- 14.17 There is residential accommodation contained above the application site and further residential accommodation in the upper floors of surrounding buildings. It is also understood that the Kings Arms Hotel provides bed and breakfast accommodation.
- 14.18 Having regard to the proposed change of use, it is considered that it would be difficult to withhold planning permission given the town centre location of the site, previous planning permissions and subject to the above conditions which would help to safeguard residential amenity.
- 14.19 In considering the rear storage building, this is large in size but would be set between the flanking boundary treatments which would help to screen views. It would also be set apart from the frontage buildings and would be single-storey (with the majority of surrounding residential accommodation understood to be above ground floor). Therefore, it is not considered that any significant adverse impact in residential amenity would be caused to those residents along St. Thomas Street.
- 14.20 There is further residential accommodation to the rear of the site with dwellings within Wykeham Place. These are two-storey properties which are set apart from the site by virtue of the associated garage block between; this provides a buffer between the dwellings and the site. It is considered that this garaging would significantly limit views of the outbuilding while given the distance between the main premises and these dwellings, it is not considered that any significant adverse impact on residential amenity would be caused.

Highway Safety

- 14.21 Comments from Hampshire Highways advise that none of the proposals would have an adverse affect on the safety and convenience of users of the adjacent highway and no highway objection has been raised (with no conditions required). Further to the comments received in respect of this planning application, Hampshire Highways have also confirmed that their comments were not contingent on the access through the pub car park to the rear of the gate being available.

Archaeology

- 14.22 Given the location of the site within Lymington and its potential archaeological sensitivity (i.e. new foundations and lowering of floor inside, combined with any new drains etc), the Archaeologist has recommended a condition and informative note is attached to any planning permission which is granted.

Conclusion

- 14.23 In conclusion, it is considered that the proposed development would be appropriate in this location having regard to the planning history, with no adverse implications for neighbours.

Human Rights

- 14.24 In coming to this recommendation, consideration has been given to the rights set out in Article 8 (Right to respect for private and family life) and Article 1 of the First Protocol (Right to peaceful enjoyment of possessions) of the European Convention on Human Rights. Whilst it is recognised that there may be an interference with these rights and the rights of other third parties, such interference has to be balanced with the like rights of the applicant to develop the land in the way proposed. In this case it is considered that the protection of the rights and freedoms of the applicant outweigh any possible interference that may result to any third party.

15. RECOMMENDATION

Grant Subject to Conditions

Proposed Conditions:

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

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Before development commences, samples or exact details of the facing and roofing materials of the external store shall be submitted to and approved in writing by the Local Planning Authority. The development shall only be implemented in accordance with the approved details.

Reason: To ensure an acceptable appearance of the building in accordance with policy CS2 of the Core Strategy for the New Forest District outside the National Park and policy DM2 of the Local Plan Part 2: Sites and Development Management.

3. The A5 (takeaway) use hereby approved shall operate between the hours of 10:00 and 23:00 only.

Reason: To safeguard the amenities of nearby residential properties in accordance with Policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

4. No deliveries, except for the delivery of food to customers, shall be made other than between the hours of 07:00 to 18:00 on Mondays to Saturdays and 08:00 and 16:00 on Sundays and Bank Holidays (with customer deliveries restricted to 10.00 - 23.00).

Reason: To safeguard the amenities of nearby residential properties in accordance with Policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

5. Prior to the first use of the A5 (take away) use hereby approved, the noise and vibration mitigation schemes stated in the submitted acoustic report (reference 16092-002-July 2016) shall be implemented and thereafter retained and maintained. The noise limit values stated in the above mentioned acoustic report shall not be exceeded.

Reason: To safeguard the amenities of nearby residential properties in accordance with Policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

6. Prior to the first use of the A5 (take away) use hereby approved, the ventilation system shall be installed in accordance with the submitted scheme (report reference C5080 dated 05 May 2016) and thereafter retained, used and maintained.

Reason: To safeguard the amenities of nearby residential properties in accordance with Policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

7. The cooking type at the premises shall be restricted to pizza products, pastas, salads and associated items. No other food types shall be cooked without the prior written approval of the Local Planning Authority.

Reason: To safeguard the amenities of nearby residential properties in accordance with Policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

8. A) No demolition/development shall take place/commence until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:

1. The programme and methodology of site investigation and recording
2. The programme for post investigation assessment
3. Provision to be made for analysis of the site investigation and recording
4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
5. Provision to be made for archive deposition of the analysis and records of the site investigation
6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of

Investigation.

- B) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (A).
- C) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (A) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: The development is located in an area of archaeological significance where the recording of archaeological remains should be carried out prior to the development taking place in accordance with Policy DM1 of the Local Plan for the New Forest District outside the National Park. (Part 2: Sites and Development Management).

- 9. External grills on the rear of the building shall be painted matt black and thereafter retained as such in perpetuity.

Reason: In the interests of visual amenity and to safeguard the character and appearance of the Conservation Area all to accord with policy CS2 of the Core Strategy for the New Forest District outside the National Park and policy DM2 of the Local Plan Part 2: Sites and Development Management.

- 10. The development permitted shall be carried out in accordance with the following approved plans:

Ground, First, Second Floor Plans, Sections & Elevations As Existing; drg no. A118/EX/01 Rev A; Proposed Floor Plans; drg no. C5080-A5-03 Rev C; Proposed Elevations; drg no. C5080-A5-04 Rev C; Block Site Plan; drg no. C5080-A5-06 Rev B, Site Location Plan drg. no. C5080-A5-05; Cold Room Compressor drg. no. CR3.

Reason: To ensure satisfactory provision of the development.

Notes for inclusion on certificate:

- 1. In accordance with paragraphs 186 and 187 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council takes a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome by giving clear advice to applicants.

In this case, the agent submitted revised plans allowing the retention of the existing shopfront and a smaller external store.

2. This decision relates to amended / additional plans received by the Local Planning Authority on 4 August 2016.
3. The Written Scheme of archaeological investigation will need to address an appropriate level of archaeological investigation as part of an archaeological mitigation strategy of all below ground excavated trenches. Within the shop front area especial attention will be needed to ensure that as and when the concrete floor is broken out, that in the event that it sits directly on archaeological deposits, the archaeological evidence is not unnecessarily disturbed and that sufficient time and resources are provided to undertake an appropriate level of archaeological recording.

Further Information:

Major Team

Telephone: 023 8028 5345 (Option 1)



New Forest
DISTRICT COUNCIL

Tel: 023 8028 5000
www.newforest.gov.uk

David Groom
Service Manager
Planning and Building Control
New Forest District Council
Appletree Court
Lynchurst
SO43 7PA

**Planning Development
Control Committee
September 2016**

Item No: 3g

15

St Thomas Street
Lymington
16/10689
SZ3195

Scale 1:1250

N.B. If printing this plan from
the internet, it will not be to
scale.

