

**3/09/0022/FP - Change of use from A1 (retail) to A5 (hot takeaway) and insertion of extractor flues at 51 Elizabeth Road, Bishop's Stortford for Mr Ramazan Yagiz**

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**Date of Receipt:** 08.01.09

**Type:** Full

**Town:** BISHOP'S STORTFORD

**Ward:** BISHOP'S STORTFORD- CENTRAL

**RECOMMENDATION**

That planning permission be **REFUSED** for the following reason:-

1. The proposed use of premises as a hot food take away is likely to cause unacceptable levels of noise and disturbance due to the levels of general night time activity associated with such uses which would be detrimental to occupiers of nearby properties, in particular those living above the parade and at no. 75 Havers Lane. The proposal would therefore be contrary Policy ENV1 of the East Herts Local Plan Second Review April 2007.

\_\_\_\_\_ (002209FP.FH)

**1.0 Background**

- 1.1 The application site is shown on the attached OS extract.
- 1.2 No. 51 Elizabeth Road is the end unit in a row of seven small retail units known as Havers Parade which has been identified as part of a Local Centre in the Local Plan. It is one of two units which are currently vacant. The remaining 5 units in the building accommodate an off license, a hairdressers, a dog grooming parlour, a bookmakers and a bakery. There are three flats at first floor level. On the opposite side of the road are four further retail units, a convenience store/ post office, a launderette and two hairdressers. At the rear of the building is a service yard and garages whilst to the front is a large grassed area. Directly to the north of the application site is the rear garden of No. 75 Havers Lane.
- 1.3 The application seeks permission to change the use of the existing vacant retail unit to A5- Hot food Takeaway. The ground floor would be subdivided to accommodate a serving and cooking area at the front and a preparation area at the rear whilst the first floor would be retained for storage. Two new extract flues some 4.4 metres in height are proposed at the rear of the property. Other than the insertion of the flues no other physical alterations are proposed externally to the building.

**2.0 Site History**

2.1 There is no recent planning history relating to the site.

**3.0 Consultation Responses**

3.1 County Highways does not object to the proposal and comments that although the scheme may result in an increase in traffic in the evenings this would be offset by the reduction during morning peak hours. Sufficient parking is available both on and off street.

3.2 Environmental Health comment that should planning permission be granted conditions regarding the provision of refuse facilities, the provision of further details of the extract flues, hours of opening and the safe removal of any asbestos found should be included in the permission.

**4.0 Town Council Representations**

4.1 Bishop's Stortford Town Council objects to the scheme on the grounds that the location is unsuitable for a takeaway due to its siting close to residential properties. There are concerns regarding the noise and smell nuisance from the extractor flues, the possibility of young people congregating outside the shop and the litter problems that would ensue. The Town Council further comments that should permission be granted additional bins be provided in the area and suitable extractor fans and filters fitted to ensure the smell from the takeaway does not affect local residents.

**5.0 Other Representations**

5.1 The application has been advertised by way of neighbour notification and a discretionary site notice. One letter of representation has been received objecting to the proposal on the grounds that the scheme may result in the failure of an existing fish and ship shop situated in South Street.

**6.0 Policy**

6.1 The East Herts Local Plan Second Review (April 2007) policies relevant to the consideration of this application are:

ENV1	Design and Environmental Quality
STC8	Local Centres and Rural Provision
TR7	Car Parking- Standards

## **7.0 Considerations**

- 7.1 The main determining issues for consideration in this case are the use of the building as an A5: Hot Food takeaway in this location; the loss of the retail unit; any impact on the amenities of neighbouring properties and parking and access.
- 7.2 Turning first to the proposed use of the building; it would result in the loss of a retail unit. Policy STC8 of the Local Plan does not permit the loss of a shop unit in an identified Local Centre where the loss would result in a significant reduction in the level of provision locally available. In this case, I am satisfied that, on the basis that the remaining units in the Local Centre, other than the bookmakers, are in A1 Retail use, the loss of this unit would not result in a significant reduction in the level of provision locally available and therefore the proposal is acceptable in this respect.
- 7.3 With regards to any impact the proposal may have on the amenities of neighbouring properties, in line with Environmental Health's recommendation, I am satisfied that the necessary equipment can be provided to ventilate the property, without unduly impacting on neighbouring properties through the imposition of an appropriately worded condition. Furthermore, I am satisfied that the visual impact of the proposed ventilation is acceptable.
- 7.4 I do, however, have concerns regarding the noise and disturbance that will be experienced by the residents of no.75 Havers Lane and the flats above the parade of shops which are situated in close proximity to the unit. In particular, No. 75, which is set forward of the application property and has rear windows only 11 metres from the shop front of no. 51. Its rear garden runs alongside the application site and the public grassed area in front.
- 7.5 Unlike an A1 retail unit, an A5: hot food takeaway unit would be open during evening hours when local residents would reasonably expect noises to be at a level appropriate to a residential area. Noise and disturbance does tend to become more obtrusive as the evening progresses and currently this location is relatively quiet during evening hours. The use would invariably attract customers who might wish to congregate outside resulting in an increase in activity during evening hours significantly increasing the level of noise and disturbance in that location over and above that currently experienced. I therefore consider that the proposed use of the premises in such close proximity to no. 75 Havers Lane, is likely to cause unacceptable levels of noise and disturbance, which would be detrimental to the occupiers of that property and also to those living above the parade, contrary to Policy ENV1 of the East Herts Local Plan.

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- 7.6 Officers have considered whether the use of a condition restricting the hours of opening would overcome the concerns expressed in relation to the noise and disturbance associated with the use. However, to overcome the concerns in relation to the impact on residential amenity in the evening hours the premises would have to close in the early evening i.e. around 7 pm such a restriction of opening hours in officer's opinion would be unreasonable and would impact upon the viability of the business. In this instance therefore it is considered that the use of a condition to limit the hours of opening would not be appropriate to overcome the impact of the proposed use on residential amenity.
- 7.7 Finally, with regards to parking and access, in line with comments from the Highway Authority and taking into account the projected times of activity, I am satisfied that sufficient parking is available in the area and adequate servicing arrangements can be provided at the rear and the proposal would not therefore have any detrimental impact on the local area in terms of highway safety.

### **8.0 Conclusion**

- 8.1 Having considered the above matters, it is my opinion that the use of premises as an A5: Hot Food Takeaway is likely to cause unacceptable levels of noise and disturbance due to the levels of general night time activity associated with such uses which would be detrimental to occupiers of nearby properties, in particular those living above the parade and at no. 75 Havers Lane contrary to Policy ENV1 of the East Herts Local Plan.
- 8.2 For this reason I recommend that planning permission be refused for the reason set out at the commencement of this report.