

ITEM NUMBER: 5c

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|-------------------------------|---|-----------------------------|
| 21/04605/RET | Change of use of basement from restaurant to hot food take-away (Cloud kitchen concept). | |
| Site Address: | Basement At 65 High Street, Hemel Hempstead, Hertfordshire, HP1 3AF | |
| Applicant/Agent: | Mr. S. Bhavsar | Tulesh Vaja |
| Case Officer: | Nigel Gibbs | |
| Parish/Ward: | No Parish | Hemel Hempstead Town |
| Referral to Committee: | Called in by Councillor Beauchamp/Deferred by DMC on 14th July 2022 | |

1. RECOMMENDATION

1.1 That planning permission be **GRANTED** planning permission.

2. SUMMARY

2.1 There are no objections in principle to the change of use in accordance with the Core Strategy's Policies CS4 and CS16. It would add to the vibrancy and vitality of Hemel Old Town Conservation Area and reinvigorate the listed building, with reference to the Core Strategy's Policy CS27 and saved Policies 119 and 120 of the Dacorum Borough Local Plan. The use would be compatible with the existing residential environment with no objections from the Council's Environmental and Community Protection Team in accordance with Policies CS12 and CS32.

3. BACKGROUND

3.1. The application's consideration was deferred by the Development Management Committee at its meeting held on 14 July 2022.

3.2 Councillors collectively agreed to defer the application to seek clarification and gain more information on Environmental Health and Licensing Controls and Use Class of a 'cloud kitchen', as well as the possibility of changing the opening times.

3.3 The Addendum for the meeting on 14th July recommended the following additional condition relating to hours of use based upon those specified by the application form:

The application form specifies:

Monday to Friday: Start Time : 10.00, End Time 05.00

Saturday: Start Time 10.00, End Time 05.00

Sundays and Bank Holidays: Start Time : 10.00, End Time 05.00.

Recommended Condition:

'Notwithstanding the hours of use specified by the submitted application form, after 12 months of the first use of the application site for the approved purposes details of the same or alternative hours of use shall be submitted to the local planning authority, accompanied by a report confirming how the use has operated during this period with reference to the impact of the use after 01.30 each day upon the residential amenity of the area. Thereafter at all times the use shall operate fully in accordance with the approved same or alternative hours use approved by the local planning authority.

Reason: In the interests of the residential amenity of the locality in accordance with Policies CS12 and CS32 of the Dacorum Core Strategy (2013), as the use after 01.30 requires review’.

4. SITE DESCRIPTION

4.1 No. 65 is a terraced, 3 storey, 18th Century Grade 2 listed building located opposite St Mary’s Square on the eastern side of Hemel Old Town High Street Conservation Area. The basement featuring entirely modern fixtures and fittings and surfaces is used as a kitchen for the cooking of meals for a courier service.

4.2 There is a restaurant (Yalla Yalla) above the basement. This restaurant is a wholly separate unit operationally unconnected with the basement use. There is a small vent within Yalla Yalla’s ‘shopfront’ serving the basement kitchen.

4.3 Access to the rear of no. 65 is via an archway linked to a communal/ private car park.

4.4 Hemel Old Town Character Zone forms an integral part of the defined Hemel Town Centre as referred to by the Core Strategy’s Figure 17 Town Centre Character Zones and Development Opportunities:

‘The Old Town - is based around the High Street, Queensway and the northern tip of the Marlowes. The main businesses include professional services, quality specialist shops. There is a strong evening economy with a variety of pubs, restaurants, cafes and an arts centre. The quality of the built environment in this zone is recognised for its special architectural and historic importance and the notable landmark of St Mary’s Church. The historic character offers further opportunities for uses which can attract visitors and new investment. Sensitive improvements to north/south pedestrian links and the public realm are needed. Building frontages need careful attention: in particular, fascias along the northern tip of the Marlowes need refurbishing. Open land, which provides a setting for the old town and links with Gadebridge Park, will be protected’.

5. PROPOSAL

5.1 The application seeks retrospective planning permission for the use of the basement for the preparation of meals and the associated courier service based upon a ‘cloud kitchen concept’.

5.2 The supporting statement confirms:

‘The Cloud kitchen concept in hot food take-away relies on remote cooking facilities and all food is delivered or collected (very rare).

The operation requires good communication i.e. phone and computers and food is delivered by owner drivers or through various food delivery companies.

Benefits of Cloud kitchen concept:

- No late-night noise disruption from people waiting outside shops.
- Approx 98% of food is delivered.
- Exact time given to collecting customers.
- No litter or take-away packaging on streets.
- No shop front or signage required.
- No anti-social behaviour.

With the increase in food delivery service, this method eliminates all of the issues

attached to a traditional hot food take-away shop’.

5.3 The recently submitted Delivery Statement has confirmed:

‘The delivery couriers will wait on the High Street outside to the entrance gate and the order will be given to them by a member of staff.

As bars and restaurants operate till late on the road, the noise issue should not be an issue. This will be reviewed on a regular basis. If there are complaints then delivery drivers will be directed to St. Marys Car Park to pick up orders’.

5.4 The Heritage Statement. This confirms amongst a range of issues:

- The Applicants are applying for a change of use from restaurant use (A3) to hot food take away (A5). There will be no need for additional signage or changes to the existing kitchen facilities. There will therefore be no material changes to the historic building in connection with the change of use.
- The hot food take away will use the cloud kitchen concept which relies on remote cooking facilities and all food is delivered or very occasionally collected. There will be no additional littering or noise, or anti-social behaviour associated with people visiting in person. There will be some additional movement when food is picked up for delivery by drivers, but this is already occurring without an obviously detrimental effect. There will therefore be negligible environmental changes to the listed building and conservation area.
- Conclusion. Number 65 High Street and the Old Town Conservation Area in which it is situated both hold architectural and historic significance and are both designated heritage assets. There will be no physical changes and only negligible environmental changes associated with this application for a change of use...

5.5 Procedural Issue. In referring the application to the Committee Councillor Rob Beachamp noted:

‘I would like to call-in the planning application 21/04605/RET for Yalla Yalla at 65 High Street. This premises is currently under investigation by our Environmental Health team due to smoke and unpleasant smells emanating from the extractor flue, which is serving both the restaurant and the Cloud Kitchen in the basement. This is having a detrimental impact on the nearby residents at 63 High Street, who are concerned that the proposed additional basement kitchen has created the problems currently experienced since its completion without planning permission in December 2021. Up until that point Yalla Yalla was only operating as a restaurant and there was not a significant issue’.

Please Note: As confirmed above the use of the basement at no.65 and Yalla Yalla at no. 65 are entirely separate businesses operating independently from each other. Since Councillor Beauchamp’s e mail, the relationship between/ operational independence of the respective businesses has been fully discussed with Councillor Rob Beauchamp, the Council’s Environmental Health Team, the Agent/ Applicant for the current application and representatives of the restaurant business at Yalla Yalla.

5.6 Since the deferral of the application it has been confirmed by the Agent’s email dated 26 July 2022:

‘The Cloud kitchen concept in hot food take-away relies remote cooking facilities and all food is delivered direct to customers home.

This eliminates noise disruption, anti-social behaviour and littering of the streets.

My Client has knowledge of this concept used in other cities and the advantage is that the business can remain operational over an extended time period.

The extended opening generally serve 2 groups of people. Those who get home late from night out and people who work in different shift patterns. This has become popular during the recent COVID lockdown.

There are no noise or odour pollution when the premises are in use.

There are no objections from the Planning or the Environmental Health departments, however the extended hours will be reviewed on 6 monthly basis and if there are complaints then my Client will reduce the operating hours.

It is debatable whether this application for hot food take-away is applicable in this circumstances. The use can be classed as light industrial or Sui Generis'.

5.7 With reference to the information provided and officers understanding of the working definition of Cloud Kitchen, there is little that officers can add, other than the Google Definition is:

'A cloud kitchen utilizes a commercial kitchen for the purpose of preparing food for delivery or takeout only, with no dine-in customers. Cloud kitchens enable restaurateurs to expand an existing restaurant or start a virtual brand at minimal cost'.

5.8 Therefore the **cloud kitchen** a concept is a food delivery business with no visitor / dining space, or takeaway counter.

5.9 In terms of the Use Classes Order, given that it is a new approach to providing cooked meals, it is a matter of interpretation as to what Cloud Kitchens form'.

5.10 It may interpreted as a Sui generis use – in this case as a hot food takeaway for the sale of hot food where consumption of that food is mostly undertaken off the premises or Class E (Commercial, business and service) (g) (iii) any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

5.11 The Environmental Health Team Member responsible for providing advice upon this application has been advised of the Members deferral of the application, and has confirmed verbally to the case officer that the Team has no additional comments.

5.12 Considering the absence of Environmental Health objections and the further clarification of how a 'cloud kitchen' operates, combined with the additional condition requiring the hours of operation to be reviewed after six months, it is not considered that seeking a change to the operating hours would be reasonable in this instance.

5.13 It is understood that if planning permission is granted the Applicant would then apply for a Licence which would include the hours of use. Currently it is understood that the business closes at 11.30 p.m.

6. PLANNING HISTORY

Planning Applications

21/03351/RET - Change of use of basement from restaurant to hot food take-away (Cloud kitchen concept). Returned application - no longer proceeding.

21/03352/LBC - Change of use of basement from restaurant to hot food take-away (Cloud kitchen concept). returned application - no longer proceeding.

21/04606/LBC - Change of use of basement from restaurant to hot food take-away (Cloud kitchen concept).
Pending-

7. CONSTRAINTS

Area of Archaeological Significance: 36
CIL Zone: CIL3
Hemel Hempstead Conservation Area
Former Land Use (Risk Zone):
Listed Building, Grade: II,
Parish: Hemel Hempstead Non-Parish
RAF Halton and Chenies Zone: Yellow (45.7m)
Smoke Control Order
Parking Standards: New Zone 3

Town: Hemel Hempstead

8. REPRESENTATIONS

Consultation responses

8.1 These are reproduced in full at Appendix A.

Neighbour notification/site notice responses

8.2 These are reproduced in full at Appendix B.

9. PLANNING POLICIES

Main Documents

National Planning Policy Framework (2021)

Dacorum Borough Core Strategy 2006-2031 (adopted September 2013)

Dacorum Borough Local Plan 1999-2011 (adopted April 2004)

Relevant Policies

Dacorum Core Strategy

NP1 - Supporting Development

CS1 - Distribution of Development

CS4 - The Towns and Large Villages

CS8-Sustainable Transport

CS10 - Quality of Settlement Design

CS11 - Quality of Neighbourhood Design

CS12 - Quality of Site Design

CS16 - Shops and Commerce

CS27 - Quality of the Historic Environment

CS29 - Sustainable Design and Construction

CS32- Air Soil and Water Quality

CC33- Hemel Hempstead Town Centre

Hemel Place Strategy

Dacorum Local Plan

13- Planning Conditions

58- Private Parking Provision

118- Important Archaeological Remains

119- Development Affecting Listed Buildings

120- Development in Conservation Areas

Supplementary Planning Guidance/Documents

Parking Standards Supplementary Planning Document (2020)

10. CONSIDERATIONS

The Main Issues

10.1 These are:

- Policy and Principle.
- The Heritage Implications.
- The Effect upon Residential Amenity.

Policy and Principle

10.2 Policy CS1 expects that Hemel Hempstead will be the focus of new development. This includes under criterion (c) maintaining the vitality and attractiveness of its town centre in accordance with Policy CS33.

10.3 Policy CS4 seeks a mix of uses in town centre locations, including through criterion (a) catering establishments. The Core Strategy's Part 13- Supporting Retailing and Commerce- reinforces CS4 by addressing the Borough's Retail Hierarchy, with Hemel Hempstead (including the Old Town) being the Principal Town Centre, providing a range of shops, services and facilities.

10.4 Policy CS16 confirms that development proposals which promote a diverse evening economy in the town centres will be supported, subject to the control of their social and environmental impacts.

10.5 These policies are in accordance with the National Policy Framework's Part 7 'Ensuring the vitality of town centres'. In particular this is confirmed by its Paragraph 86 explaining that planning policies and decisions should support the role that town centres play, with a positive approach to their growth.

10.6 The Framework's Part 7 is in the context of The Framework's Part 6- 'Building a strong, competitive economy' which reinforces the economic objectives in delivering sustainable development.

10.7 In principle the use of the basement for the catering business is in accordance with the aforementioned policies.

Heritage: Implications for the Conservation Area and the Listed Building

10.8 The Listed Building and Conservation Area are designated heritage assets. S72 (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention to be paid to the desirability of preserving or enhancing the character or appearance of that Conservation Areas. The Act's Section 66 of the Act expects LPAs have special regard to the desirability of preserving listed buildings and their setting or any features of special architectural or historic interest that they possess.

10.9 Policy CS27 seeks to protect, and where appropriate, enhance the integrity of the setting and distinctiveness of heritage assets, and this reflects the statutory duties defined in the Act. This reinforces the expectations of saved Policies 119 and 120 of the Dacorum Borough Local Plan.

10.10 The Framework's Paragraphs 194 to 198 address 'Proposals affecting heritage assets', with Paras 199 to 208 responding to 'Considering potential impacts'. It is important to note:

195. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.

197. In determining applications, local planning authorities should take account of:

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c) the desirability of new development making a positive contribution to local character and distinctiveness.

199. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether

any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

200. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:

a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional.

206. Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.

10.11 The proposal would not involve any external changes to the basement. With reference to the relevant policies, the specialist of the Design & Conservation Team, the submitted information and the site conditions/ observations, the use would be compatible with the Conservation Area and the listed building. It would add to the CA's vitality and vibrancy by enhancing its character, with the resultant full use of the listed building. The proposal would be in accordance with Policy CS27 of the Core Strategy and Saved DBLP Policies 119 and 120 and the Framework's expectations.

Impact upon Residential Amenity

10.12 This is with reference to Policies CS4, CS12, CS16 and C32 and that it is expected that in Town Centre locations (including Hemel Old Town) support a range of uses. Catering based uses form an integral part of the main shopping function. It cannot be expected that the quiet evening ambience associated with wholly residential areas is replicated in Town Centre / Local Centre locations. This is because of their expected vibrancy and vitality is a consequence of the combination of the mix of uses. Town Centres are expected to feature a range of uses which harmoniously coexist and interact within a vibrant inbuilt evening economy.

10.13 Given the site's location, the nature of the use and the advice of the Council's Environmental and Community Protection Team, there is no objection to the proposal based upon the effects of noise and disturbance. This is with reference to the use itself, the very limited expected customer collection of take away food and the effects of the delivery service, whereby it is considered that the use can harmoniously coexist with the local residential environment.

10.14 In these respects precautionary conditions are recommended regarding the impact of the delivery service and hours of use, with both having due regard to the Agent's respective separate received statements.

10.15 As confirmed by the Agent's e mail dated 26 July 2022, '*...the extended hours will be reviewed on 6 monthly basis and if there are complaints then my Client will reduce the operating hours*'. It is recommended therefore that a condition be added requiring a noise report to be submitted after 6 months with the mechanism within the condition to allow for a reduction in the hours of operation, if necessary.

Other Material Planning Considerations

Highway Implications

10.14 It is not considered that the short stay parking of delivery vehicles within the High Street would cause highway safety issues.

Response to Neighbour Comments

10.15 Based upon a site meeting held on the 14 April 2022, it was understood that the residents who have made representations regarding the current application related to Yalla Yalla's extraction system and not the basement at no. 65. As confirmed earlier the respective uses of no. 65 and the basement are not connected. On this basis, given the considerations referred to above, in particular the Environmental and Community Team's advice, there are no objections to the use based upon the impact to nearby/ adjoining dwellings.

Community Infrastructure Levy (CIL)

10.16 The application is not CIL liable.

11. CONCLUSION

11.1 This small business use would add to the Old Town's Conservation Area's vitality and vibrancy, ensuring full use of the listed building, with no expected / identified harm to the residential amenity of the immediate locality. There is expected to be resultant consequent harmonious coexistence between the respective commercial and residential uses. The Applicant's Courier Delivery Plan, as well as the proposed hours of operation review condition, ensures that if unexpected problems do arise, this can pragmatically be addressed in the future. The use would be in accordance with Policies CS4, CS12, CS16 and CS27 of the Core Strategy and saved DBLP Policies 119 and 120.

11.2 The proposal is a sustainable development in accordance with the National Planning Policy Framework's economic, social and environmental objectives.

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

Condition(s) and Reason(s):

1. **Following 18 months from the implementation of the use hereby permitted, an updated Delivery Statement shall be submitted to the local planning authority confirming how the use has operated, whether there has been a requirement for delivery drivers to use St Mary's Car Park and a delivery plan demonstrating how the delivery service would be subsequently operated. The use shall thereafter be carried out fully in accordance with the approved details.**

Reason: In the interests of residential amenity and highway safety in accordance with Policies CS8, CS12 and CS32 of the Dacorum Core Strategy (2013).

2. **There shall be no customer collection of take away food after midnight each day and the take away component shall only be ancillary to the approved courier based use in accordance with the submitted Planning Statement.**

Reason: In the interests of residential amenity in accordance with Policies CS8, CS12 and CS32 of the Dacorum Core Strategy (2013) and for the avoidance of doubt.

3. Notwithstanding the hours of use specified by the submitted application form, after 6 months of the first use of the application site for the use hereby permitted, a Residential Impact

Report shall be submitted to and approved in writing by the Local Planning Authority. The Residential Impact Report shall detail how the use has operated during this initial 6-month period, any impact of the use after 01.30 upon the residential amenity of the area, and details of the same or alternative hours of use that will operate thereafter. Thereafter, at all times, the use shall operate fully in accordance with the approved same or alternative hours of use detailed in the Residential Impact Report. If no Residential Impact Report is approved by the Local Planning Authority within 12 months of the first use of application site for the use hereby permitted, the operation shall cease at 1:30 a.m.

Reason: In the interests of the residential amenity of the locality in accordance with Policies CS12 and CS32 of the Dacorum Core Strategy (2013), as the use after 01.30 requires review.

4. The development hereby permitted shall be carried out in accordance with the following approved plans/documents:

**Location Plan
2021/65HS/001Rev A
Courier Plan (e mail received 10 June 2022)**

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

Informatives:

1. Planning permission has been granted for this proposal. The Council acted pro-actively through positive engagement with the applicant during the determination process which led to improvements to the scheme. The Council has therefore acted pro-actively in line with the requirements of the Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2015.

APPENDIX A: CONSULTEE RESPONSES

| Consultee | Comments |
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| Environmental And Community Protection (DBC) | Further to a visit to the site to establish the extractor system and control I would respectfully ask that my previous comments are withdrawn. We have no objection to this application. |
| Archaeology Unit (HCC) | No response I am writing to let you know that we have no comments to make on the above application, and to thank you for your patience. |
| Planning Enforcement | Please Note: The Enforcement Team has been updated upon the application. |
| Conservation & Design (DBC) | This is an 18th century three storey building with brick and clay tiled roofs. The proposed kitchen is located within the basement. The works |

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| | <p>have been undertaken and as noted in the BEAMS heritage report the original fabric is somewhat hidden. The heritage report allows a good understanding of the building.</p> <p>We would agree with the proposal that the heritage impact on the basement would be nominal. As such we would not object. Any harm caused would be mitigated by the benefit of the basement being brought into use.</p> <p>Recommendation We would not object to the proposals although it would be recommended that in the future applications be made before works are undertaken.</p> |
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APPENDIX B: NEIGHBOUR RESPONSES

Number of Neighbour Comments

| Neighbour Consultations | Contributors | Neutral | Objections | Support |
|-------------------------|--------------|---------|------------|---------|
| 16 | 2 | 0 | 2 | 0 |

Neighbour Responses

| Address | Comments |
|--|--|
| 63E High Street Hemel Hempstead Hertfordshire HP1 3AF | <p>I am objecting this planning proposal based on the issues I have been experiencing from this restaurant since around 9th December.</p> <p>My flat has been affected severely by the smell of smoke / food, to the extent I have had to relocate my clothes, as well as not being able to have my windows open - which in an old building has now created damp issues as I need the air circulation.</p> <p>There has been a new flume installed which is below my window level, which is where I believe the pollution is coming from.</p> <p>Whilst I have tried to resolve this with restaurant owners directly, unfortunately we have been unable to reach a solution, and for that reason I am objecting to this.</p> |
| 63C High Street Hemel Hempstead Hertfordshire HP1 3AF | <p>I live next door to and above the restaurant at 65 High St and the smell of kebabs being cooked permeates my flat. The smell is both unpleasant and unhealthy.</p> <p>I therefore wish to appeal against the plans they have lodged on the grounds that any extension to their premises will exacerbate the problem.</p> <p>I don't want my flat to smell like a kebab shop!</p> |

