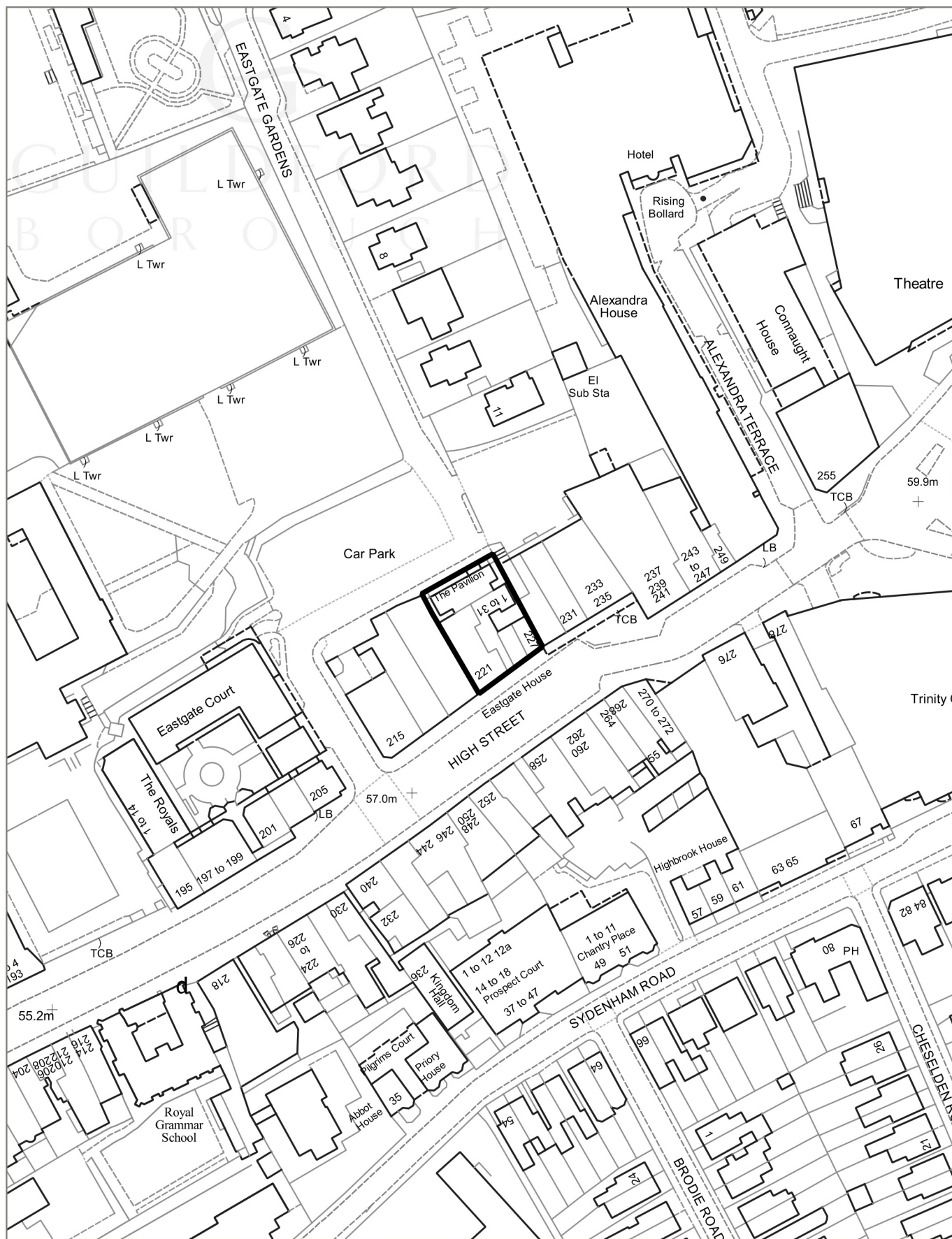


21/P/00378 - 227 High Street, Guildford



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Print Date: 25/08/2021



Not to Scale



GUILDFORD
BOROUGH



Not to scale



App No: 21/P/00378
Appn Type: Full Application
Case Officer: Kelly Jethwa

8 Wk Deadline: 04/05/2021

Parish: Holy Trinity
Agent : Maltby
Giles Maltby MRTPI
33 Longmead
Guildford
GU1 2HN

Ward: Holy Trinity
Applicant: MALTBY MRTPI
227
High Street
Guildford
GU1 3BJ

Location: 227 High Street, Guildford, GU1 3BJ
Proposal: Change of use of the existing ground floor E(a) use retail shop to E(b)/Sui Generis (hot food takeaway) Lebanese lunch restaurant and takeaway.

Executive Summary

Reason for referral

This application has been referred to the Planning Committee by Cllr John Rigg, who believes that a departure from policy E7(4) is justified.

Key information

Change of use from a retail shop use class E3(a) (formerly Class A1) to a mixed use as a E(b)/Sui Generis (hot food takeaway) Lebanese lunch restaurant and takeaway.

This is a vacant unit at the top of the High Street outside the cobbled street and in the secondary shopping frontage.

Summary of considerations and constraints

Policy E7(4) (a) and (b) were intended to prevent dilution of E(a) (previously class A1) retail uses i.e. no more than two or more adjacent non-retail uses, and no more than a third of the secondary frontage in non-retail use.

46% of the frontage is currently within uses that would have been considered non-A1 uses. This frontage already exceeds the 33% threshold for non-A1 uses. The situation after implementation of the proposal would not be "no more than one third".

The purpose of paragraph (4) of the policy is to prevent piecemeal loss of shop (former A1) uses which would have a weakening effect on the viability of remaining units in the secondary shopping frontage. In respect of paragraph (4), we could accept that the proposed takeaway is not entirely out of character at this easternmost end of the High Street, however loss of this shop use would conflict with (4) (a) and (b), and thereby further reduce the town centre's shopping function under (4) (d).

RECOMMENDATION:

Refuse - for the following reason(s) :-

1. The proposed change of use would result in more than one third of this section of the defined street level frontage being in non-retail use, eroding the shopping function of the town centre, contrary to Policy E7 of the Guildford Borough Local Plan: strategy and sites 2015-2034 and Chapter 7 of the National Planning Policy Framework (NPPF).

Informatives:

1. This decision relates expressly to drawing(s) E101, E102, E103, E107, E108, E109, E110, E111, E112, P109, GU1 3BJ - 1 and GU1 3BJ - 2 received on 24 February 2021; E104 REV A, E105 REV A, E106 REV A, P103 REV A, P104, P105, P106 and P107 received on 22 March 2021.
2. This statement is provided in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. Guildford Borough Council seek to take a positive and proactive approach to development proposals. We work with applicants in a positive and proactive manner by:
 - Offering a pre application advice service
 - Where pre-application advice has been sought and that advice has been followed we will advise applicants/agents of any further issues arising during the course of the application
 - Where possible officers will seek minor amendments to overcome issues identified at an early stage in the application process

However, Guildford Borough Council will generally not engage in unnecessary negotiation for fundamentally unacceptable proposals or where significant changes to an application is required.

Pre-application advice was not sought prior to submission and there are significant objections to the application that minor alterations would not overcome, it was not considered appropriate to seek amendments through the course of this application.

Officer's Report

Site description.

The application site relates to a vacant commercial unit in the Guildford Town Centre, the unit presently has a retail E(a) use.

The site is also within the Town Centre Conservation Area, a Primary Shopping Area and Secondary Shopping frontage (167-235 High Street), a District Heat Priority Area, an Area of High Archaeological Potential (AHAP) and is covered by an Article 4(2) Direction.

The site is located towards the top of the High Street, beyond the cobbled area. The unit is situated on the ground floor of a six storey building, residential flats development occupies the upper floors.

Proposal.

Change of use of the existing ground floor E(a) use retail shop to E(b)/Sui Generis (hot food takeaway) Lebanese lunch restaurant and takeaway.

On submission the application was for a change of use of the existing ground floor A1 use retail shop to A3/A5 Lebanese lunch restaurant and takeaway. However, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (SI 2020 No.757) were introduced by the government on 20 July, and took effect on 1 September 2020. The proposal description was updated to reflect the changes to the use classes and the type of uses sought by the applicant with their agreement.

Relevant planning history.

None.

Consultations.

Internal consultees

Head of Environmental Health and Licensing: No objection. Conditions regarding noise, and extraction equipment recommended should permission be granted.

Amenity groups/Residents associations

Holy Trinity Amenity Group: no response.

Third party comments:

None received.

Planning policies.

National Planning Policy Framework (NPPF), 2021:

Chapter 2: Achieving sustainable development

Chapter 4: Decision Making

Chapter 6: Building a strong competitive economy

Chapter 7: Ensuring the vitality of town centres

Chapter 12: Achieving well-designed places

Guildford Borough Local Plan: Strategy and Sites, 2015-2034:

The Guildford Borough Local Plan: Strategy and Sites was adopted by Council on 25 April 2019. The Plan carries full weight as part of the Council's Development Plan. The Local Plan 2003 policies that are not superseded are retained and continue to form part of the Development Plan (see Appendix 8 of the Local Plan: strategy and sites for superseded Local Plan 2003 policies).

Policy E7: Retail and leisure uses in Guildford Town Centre

Policy D1: Place shaping

Policy D3: Historic environment

Guildford Borough Local Plan 2003 (as saved by CLG Direction 24 September 2007):

G1 General Standards of Development

G5 Design Code

HE4 New Development Affecting Setting of a Listed Building

HE7 New Development in Conservation Areas

Supplementary planning documents:
Vehicle Parking Standards SPD 2006

Planning considerations.

The main planning considerations in this case are:

- the principle of development
- the impact on the heritage assets
- impact on neighbour amenity
- parking/highway considerations

The principle of development

This application seeks permission for a change of use of the premises from an E(a) use retail shop to E(b)/Sui Generis Lebanese lunch restaurant and takeaway. Policy E7 of the LPSS is relevant for this proposal which regards retail and leisure uses in the Guildford Town Centre and seeks to protect both A1 and Class A uses within the area.

The application site lies within an area designated as Secondary Shopping Frontage and as such the proposal must be compliant with point (4) of policy E7.

Policy E7 (4) sets out that within the Secondary Shopping Frontage defined on the Policies Map, planning permission for the change of use of ground floor shops (Class A1) to Class A3, A4 or A5 will be permitted where all the following criteria are met:

- (a) the additional uses result in no more than two permitted ground floor non-retail uses adjacent to each other; and
- (b) the additional use results in no more than one third of this section of the defined street level frontage in permitted non-A1 Use Class; and
- (c) the use will not result in loss of amenity in terms of noise, disturbance, smell, litter or traffic generation; and
- (d) the proposed use will not be detrimental to the shopping function or character of the town centre.

The new Class E use now encompasses a number of uses which were formally separated into different use classes (A1, A2, A3, B1a, B1b, B1c, and some D1 and D2 uses). Class E therefore includes gymnasiums and indoor recreation (not involving motorised vehicles or firearms), clinics, health centres, creches, day nurseries, day centres, office uses, research and development of products and process's, industrial processes which can be carried out in any residential area without causing detriment to the amenity of the area, financial and professional services (not medical) and shops. Planning permission is therefore not required for changes of uses within this new use Class E.

The previously A5 takeaway use is not covered by Class E and is defined as 'Sui Generis'. Therefore the change of use to hot food takeaway element of the proposal requires planning permission and the existing shop use is protected by the still applicable policy E7 (4). The old use classes A1 to A5 remain relevant to policy E7 (4) insofar as they are taken to mean the actual uses they refer to, i.e. A1 means "shops" A5 means "hot food takeaways". References to use classes in policy retain their meaning as referenced in the list of uses in Appendix 2: Glossary of the LPSS. Criteria (a) to (d) of policy E7 (4) were intended to prevent dilution of E(a) (previously Class A1) retail uses beyond these thresholds, as such all are still applicable to the sui generis element of the proposal, which falls outside of the new Class E.

The criteria shall be assessed below.

Would the proposal result in no more than two permitted ground floor non-retail uses adjacent to each other?

The immediate neighbouring unit to the west is Magic Scissors barbers (previously A1) and immediately to the east is Romans estate agents (previously A2). On the other side of Romans is Phyllis Tuckwell a charity shop (previously A1). Therefore, the change of use of this unit would result in there being a row of two adjacent non-retail uses, which complies with the criterion.

Would the proposal result in no more than one third of this section of the defined street level frontage in permitted non-A1 Use Class?

Appendix 5 of the LPSS sets out the Guildford Town Centre shopping frontages, the application site falls within the shopping frontage 167-235 High Street. Officers have visited the site and reviewed historic planning permissions and determine that approximately 46% of the frontage is currently within uses that would have been considered non-A1 uses. This frontage already exceeds the 33% threshold for non-A1 uses. The situation after implementation of the proposal would not be "no more than one third". The additional non-retail use would exacerbate the situation and as such fails to comply with this criterion. Policy E7 provides no exemptions to this. Despite the changes to the Use Classes Order the aims of this policy remain and therefore this matter continues to carry significant weight.

Impact on amenity

It needs to be assessed whether the proposal would result in material harm to amenity in terms of noise, disturbance, smell, litter or traffic generation.

The application unit is set between two commercial units and beneath a multi-storey block of flats. To the front of the site are additional retail and commercial premises opposite. To the rear of the unit is an enclosed courtyard which serves a few of the ground floor commercial units and the flats above. The proposal involves the installation of an extractor riser on the rear of the unit within the central courtyard, it would climb from ground floor level up to the roof.

The Environmental Health team have assessed the proposal and do not raise any objections with regard to noise, disturbance or odour, based on the submitted supporting details including noise survey and assessment report and equipment specification. Had the application been otherwise acceptable, a condition requiring the ventilation and extraction system be implemented in accordance with the submitted details would have been recommended, in order to ensure suitable noise, disturbance and odour control.

By virtue of its size and siting the proposed external extractor riser would have no adverse effect on the residential amenity enjoyed by the occupants of surrounding properties, in terms of loss of light and overbearing impact.

It is expected refuse bin provision would be made within the unit and there are bins nearby out of the street, as such the proposal is unlikely to result in a litter problem. The application is found to be acceptable in this regard.

The application site is in the Guildford Town Centre and as such is a sustainable location close to transport links and public car parks, therefore, the application is found to be acceptable in regard to traffic generation.

Would the proposal development be detrimental to the shopping function or character of the town centre?

The proposed change of use would retain the existing shop frontage and would therefore maintain the character of the unit, however, the loss of an existing retail unit would add to the existing unacceptable erosion of retail uses in the area. It is noted there are a significant number of takeaways and restaurants now at this easternmost end of the town centre, which have been gradually changing its character. As such the proposal would result in a cumulative adverse impact on the function of the town centre as a retail destination. The underlying purpose of the amendments to the Use Classes Order was to stimulate the vitality of town centres by allowing greater flexibility in terms of changes of use, not to permit development which potentially could have a detrimental impact on that vitality; it is of considerable relevance that takeaway uses were not included within the new Class E.

Impact on heritage assets

Statutory provisions:

Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 states that 'In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.'

Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 states that 'In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.'

NPPF provisions:

It is one of the core principles of the NPPF that heritage assets should be conserved in a manner appropriate to their significance. Chapter 16 of the National Planning Policy Framework addresses proposals affecting heritage assets. Para 199 sets out that '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'. the NPPF sets out that the local planning authority should identify and assess the particular significance of any heritage asset...They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.

Paras 200-208 set out the framework for decision making in planning applications relating to heritage assets and this application takes account of the relevant considerations in these paragraphs.

The site is located within the Guildford Town Centre Conservation Area opposite a number of listed and locally listed buildings. No changes are proposed to the front of the unit. The proposed extractor riser would be a large, unattractive structure climbing 6 storeys of the building. It would project 1m above the tallest point of the building. It would be set in from the front and rear elevations of the building, located within the central courtyard where it would not be visible in either the front or rear street scene. As such, the proposed development would not result in any material harm to the designated or non-designated heritage assets.

Fall back position?

The unit's existing use could change to any other use now falling within Use Class E, which include non-retail uses, without the need for express consent. This is a material consideration which has to be weighed against the identified breach of policy E7, greater weight can be given to it if new 'fallback' options for developers being implemented as an alternative to their pursuit of planning permission are likely and taking into account the relative impact.

In this case, a potential fallback position for the applicant could be use of the unit solely as a restaurant, since this would not require planning permission being within the existing use Class E. The proposal is for a mixed use lunch restaurant and takeaway, the submitted floor plan identifies a limited space for customers to dine in, does not identify customer seating or toilet provision, which are required for a restaurant. As such it not clear from the information provided that the unit could realistically be used solely as a restaurant, the takeaway element is likely to make up a significant proportion of sales. No supporting information has been submitted to identify any alternative realistic Class E uses that are likely to come forward in the event permission is refused.

Despite it being necessary to give some weight to the fact that planning permission is not required to change sections of the defined street level frontage to certain non-retail uses (within Class E), there is uncertainty over whether the application unit is suitable for such alternative uses, therefore it remains the case that policy E7 (4) carries relatively greater weight and remains the determinative factor in the balance.

Conclusion.

The proposed development would result in the loss of a retail unit within a Secondary Shopping Frontage where the appropriate balance between the number of retail and non-retail complementary uses has already been adversely affected. The proposal would add to the cumulative effect of the erosion of the shopping function of the town centre and would fail to comply with Policy E7(4) of The Guildford Borough Local Plan: Strategy and Sites 2015-2034 and Chapter 7 of the NPPF.