

Application No: 22/13222/FH

Location of Site: The Stade, Folkestone Harbour, Folkestone, CT20 1QH.

Development: Temporary change of use of land for the stationing of an ice cream van for a three year period from 1st March to 30th September each year, between 2023 and 2026.

Applicant: Mr. F Fernando.

Agent: Mr. Andrew Burgess, Andrew Burgess Planning

Officer Contact: Lisette Patching

SUMMARY

This application was considered at the meeting of the Planning and Licensing Committee on 21st February 2023 and Members resolved to refuse planning permission. In order to obtain clarification on the exact planning grounds for refusing planning permission, the application is being reported back to Committee. The officer's report that was considered at the meeting is appended at **Appendix 1a** and the recommendation remains as previously.

The application seeks temporary planning permission for the stationing of an ice cream van during March to September each year, for a period of three years. It remains the opinion of officers that, subject to conditions, the proposed use of the land would result in a neutral impact on the significance of the conservation area; it would not result in unacceptable impacts on residential or visual amenity or highway safety; would not result in increased risk of flooding to the site or neighbouring land and would result in economic and tourism benefits to the area. It is, therefore, recommended that planning permission be granted.

RECOMMENDATION:

That planning permission be granted subject to the conditions set out at the end of the report and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.

1. ADDITIONAL INFORMATION

1.1 The applicant has submitted a supporting statement with photographs in response to comments and concerns made at the Committee meeting on 23rd February. The statement is available in full on the planning file and the main points are summarised below:

- We have no connection to Folkestone Harbour Development Company other than them being our landlord;
- Do not run freezers. Do not need them as do not sell lollies;
- Operated for 28 days last year at busiest times with no safety issues;
- Hooked & Crooked have wider unit & have not had safety issues or accidents;

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- Railings have been upgraded to a double chain;
- Visual intrusion is a personal opinion;
- Locating on Harbour Arm is no longer an available option;
- We have no connection to previously refused application;
- We do not take up 50% of the pavement;
- Propose barriers for queues, to run alongside serving hatch, to separate queues from pedestrians walking past, to mitigate safety concerns;
- Would be more space next to van than next to existing fish and chip unit;
- Multiple businesses selling the same products is usual in seaside towns & is not a planning consideration;
- It is not possible to run the van engine and be connected to electric;
- Viability of other businesses is not a reason to refuse permission;
- There will be no deliveries to the pitch site, vans are stocked off site;
- Sell ice creams only so no litter from 90% of sales;
- Will provide a bin & remove it each day;
- Many events have stalls along the length of The Stade that obstruct the PROW, in addition to the businesses already there;
- Vintage van is more in keeping with heritage than a pop up stall;
- Van will go in and out first thing in morning and late afternoon so will not cause congestion;
- Emergency vehicles would access area via the road not pedestrian area;
- Vintage van will be the only van to trade on this pitch & happy to accept a condition;
- Will be offering 3 jobs;
- No more risk than events held on The Stade;
- Residents' concerns about popularity of The Stade is not a reason to refuse permission;
- Harbour Company application has been withdrawn;
- Will cease trading between 5pm and 6pm and will not trade during bad weather or in cold months;
- If electrical points are not available we will not trade;
- Pitch is 15m (49 feet) from residents;
- Will be serving on to pedestrian area. Would be unsafe to serve onto road and carpark. Happy to accept a condition;
- This was trialled for 28 days last year and busiest days were picked. No reports of falls over the edge or incidents;
- I had a van opposite Rotunda lifts for 10 years and uncle had Gillhams Butchers in Folkestone for many years;
- Pay rates to the Council and rent to Harbour Company;
- Electrical connection is in the ground on the pitch and would be connected under the van so would not be a trip hazard;
- There is a busy pub next to residents;
- Vintage van less harmful than existing vehicles in the area;
- Take concerns for public safety seriously.

- 1.2 The agent has advised that the applicant is prepared not to trade when large events take place on The Stade and has undertaken to only use the heritage van on the pitch and to put up a barrier and signage each day to direct customers to queue, to keep the rest of the pavement free.

2. APPRAISAL

- 2.1 It may assist the Committee to consider the reasons for refusal for the previous application 21/1492/FH for six pitches and whether the current application for one pitch overcomes the previous reasons for refusal, as reasons 1 and 2 encapsulated Members main concerns when they considered this current application. A copy of the decision notice is appended at **Appendix 1b**.
- 2.2 The first ground for refusal related to increased activity on the promenade, including queuing and consumption of food, causing an obstruction to the free flow of pedestrian movement in a manner harmful to the safety and amenity of pedestrians and increase the potential for obstruction of traffic in a manner harmful to highway safety and amenity. Members are advised to consider whether the reduction from six units to one is sufficient to overcome this ground of refusal. The professional advice of officers is that it is sufficient and that, in the absence of any objection from KCC Highways, a ground for refusal relating to pedestrian and highway safety would not be reasonable or defensible at appeal.
- 2.3 The second reason for refusal related to harm to residential amenity from cooking smells. This would not be an issue with the proposed ice cream van as no cooking would be required. An additional condition is recommended, that the pitch be used by an ice cream van only.
- 2.4 The third ground for refusal related to harm to the character and appearance of the conservation area due to the number and prominent siting of the six food units proposed. Members are advised to considered whether the siting of one food unit only, overcomes this reason for refusal. The professional advice of officers is that, given the siting of the pitch immediately adjacent to well used and marked out parking spaces, it would be difficult to justify that one mobile unit would be any more harmful to the character and appearance of the conservation area than the daily use of those parking spaces.

Comments on applicant's supporting statement

- 2.5 The applicant has offered to put up a barrier and signage each day to ensure sensible queuing, not to trade on days when there are events and to restrict the vehicle that can use the pitch to the heritage van only. These are not included as proposed conditions as it is not considered they would meet the tests of Paragraph 57 of the NPPF, which makes it clear that conditions must be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

- 2.6 Public safety is not a material planning consideration, as this is controlled by other legislation, so conditions requiring barriers and restricting trading on event days are not necessary to make the development acceptable in planning terms, so would not meet the test. In addition, the provision of barriers on land outside of the application site could not be required by condition as they would be on land not within the applicant's ownership or control. Therefore, such a condition would not be enforceable. Restricting the van that can be parked on the pitch to a particular vehicle would not be fairly and reasonably related in scale and kind to the development, as it is the use of the land that requires planning permission not the vehicle itself, as the vehicle is not development.

3. CONCLUSION

- 3.1 As previously concluded, it is considered that the proposed use of the land for the stationing of an ice cream van would be in keeping with the commercial and tourism uses of this harbourside location and constitutes sustainable development that is in accordance with national and local planning policy. It is not considered that it would detract from the visual amenity of the area and it would have a neutral impact on the significance of the conservation area. Given the tourism and other activity in the area the use would not result in a significant increase in noise and disturbance to local residents. There are no objections on highway or flooding grounds and it is considered that the proposal would result in economic and tourism benefits to the area. The proposal is considered to be in accordance with the development plan and it is therefore recommended that planning permission be granted.

4. RECOMMENDATION

That planning permission be granted subject to the following conditions and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.

Conditions:

1. The use hereby permitted shall cease on or before 30th September 2026 and the vehicle, together with any associated paraphernalia, such as litter bins, shall be removed from the site at the end of this period.

Reason: In order that the impact of the use on the amenity of the area and the conservation area can be reviewed at the end of the temporary period.

2. The approved use shall take place only from the private land owned by Folkestone Harbour and Seafront Development Company in the position marked on the site plan submitted on 10th January 2023.

Reason: For the avoidance of doubt.

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3. The ice cream van shall only operate on the site between 1st March and 30th September each year and the van and any associated paraphernalia, such as litter bins, shall be removed from the site when trading finishes at the end of each day.

Reason: In the interests of the visual amenity of the streetscene and to preserve or enhance the special character of the conservation area.

4. The van engine shall be switched off and the van connected to mains electricity while the site is in use for the sale of ice cream. No diesel or petrol generators shall be stationed or used within the site.

Reason: In the interests of residential amenity and to preserve or enhance the special character of the conservation area.

5. The pitch hereby approved shall be used for the parking of an ice cream van only.

Reason: In order to prevent the use of the pitch by a unit cooking food, in the interests of the amenities of nearby residents.