

Application No: Y17/1264/SH

Location of Site: Pedestrian Precinct Sandgate Road Folkestone Kent

Development: Use of land as a street market

Applicant: Mr Robert Richardson
Folkestone Town Centre Management
The Management Suite
Bouverie Place Shopping Centre
Folkestone
Kent
CT20 1AU

Date Valid: 11.10.17

Expiry Date: 06.12.17

Date of Committee: 19.12.17

Officer Contact: Miss Beth Lennon

RECOMMENDATION: That planning permission be granted subject to the conditions set out at the end of the report.
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1.0 THE PROPOSAL

- 1.1 This application seeks planning permission for use of the land as a street market on any day of the week, for a maximum of 104 days per year. The opening times of the market would be 9am to 6pm Monday to Saturday and 9am to 4pm on Sundays and bank holidays.
- 1.2 Although the proposal is for 104 days of markets per year, the applicant has confirmed that, other than for December, one market event would last for no more than 7 days at one time, with 5 days between market events. The Christmas market would be in place throughout the month of December as the wooden huts are more permanent structures than the frame tents and cannot be removed on a daily basis.
- 1.3 Layout plans of the proposed market have been submitted which show 6 frame tents to be used in the general market which would each have a width of 6 metres and a depth of 3 metres. The proposal includes a Christmas market to be run from the end of November each year throughout December which would use up to 8 wooden cabins instead of frame tents, these cabins would measure 3 metres by 3 metres. The proposed market stalls would be positioned back to back with the front of the stalls fronting onto the adjacent shops.
- 1.4 The application form states that refuse would be removed by individual traders. No toilet or handwashing facilities are to be provided, however there are public toilets in close proximity to the site. Also, it is understood that the

existing market at the lower end of Sandgate Road and Guildhall Street is also reliant on public facilities.

- 1.5 The application as submitted also included events for up to 30 days per year, however, it has been determined that the events proposed would not require planning permission and have therefore been removed from the application.

2.0 LOCATION AND DESCRIPTION OF SITE

- 2.1 The application site is the upper end of the pedestrianised area of Sandgate Road, beginning where the road becomes pedestrianised ending approximately in line with West Cliff Gardens and Alexandra Gardens.
- 2.2 The application site is within the defined settlement boundary of Folkestone and is immediately adjacent to one Grade II Listed Building (Lloyds Bank). The site is outside of the Leas & Bayle Conservation Area which begins at the end of the high street (almost 100 metres from the application site) and across Bouverie Place.
- 2.3 The site has an area of approximately 0.18 hectares, the width of the high street at this point is approximately 18 metres.

3.0 RELEVANT PLANNING HISTORY

- 3.1 There is a long history for the site including advert consents and planning permission for the use of the land as a street market. There are numerous permissions for the lower end of Sandgate Road and Guildhall Street for street markets which include a current permission. The application site was granted a permission in 2000 for use of the land as a street market but this was a temporary permission which only allowed use of the land for street markets for two years – this permission was never extended or renewed so is no longer applicable.

- 3.2 Permissions for the lower end of Sandgate Road and Guildhall Street:

96/0059/SH	-	use of land as a street market on Thursdays and Saturdays. Approved with Conditions. 04.03.96.
97/1073/SH	-	Renewal of temporary Planning Permission 96/0059/SH for use of land as a street market on Thursdays and Saturdays. Approved with Conditions. 01.05.98.
Y02/0990/SH	-	Use of land as a street market on Saturdays and Thursdays. Approved with Conditions. 22.11.02.
Y07/0052/SH	-	Use of land for Sunday street market (relocated from Folkestone seafront). Approved with Conditions. 27.02.07.

Y09/1210/SH - Variation of condition 1 of planning permission Y07/1562/SH to allow the continued use of land as a street market on Saturdays and Thursdays. Approved with Conditions. 11.02.10.

3.3 Permission for the application site:

Y00/0831/SH - Use of land as a street market on Thursdays and Saturdays. (Extension to existing street market area). Approved with Conditions. 10.10.00.

4.0 CONSULTATION RESPONSES

Folkestone Town Council

Object – subject to more detail on the running of the market, layout, quality of awnings etc., opening hours, rubbish collection, toilet provision, handwashing facilities.

These details have since been provided by the applicant but the Town Council have not yet provided additional comments.

KCC Highways and Transportation

I refer to the above planning application and having considered the development proposals and the effect on the highway network, raise no objection on behalf of the local highway authority.

I would add that a clear path through the area intended for the markets and events should be maintained at all times, to ensure the safe passage of pedestrians and the emergency services.

I would also suggest consulting the emergency services for their views on this application.

INFORMATIVE: It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority.

Across the country there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at <https://kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-land/highway-boundary-enquiries>

The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

Listed Building Consultant

No aspect of the proposal would affect the historic environment of the Conservation Area, since the proposals only involve temporary stands or stalls on the existing street with no physical alterations. There may be consequential requirements such as the provision of power access pillars and these need to be carefully considered. Retractable pillars would be best as they disappear out of sight when not in use. It might also be worth discussing the imposition of a design code covering the shape and colour of the Trader's stands. This would make for a more attractive and classier market than would be the case if traders are left to their own devices.

Environmental Health

No objection to the granting of this application. Conditions will be addressed at the licensing phase.

Economic Development

Regarding the above planning application, markets and events have the potential to uplift town centres. The market should provide an impetus for the wider engagement of town centre retailers to ensure the programme of markets and events has wide support and provide an opportunity for those retailers to engage. Markets should also attract additional footfall such as by offering speciality markets and increasing the hours the town centre is 'open' through evening trading. Some research by Manchester Metropolitan University showed that markets held on Mondays, Tuesdays, Wednesdays and Thursdays also tended to increase footfall to town centres than would otherwise be the case. Adding value is important as it avoids markets becoming direct competitors and diverting consumer spending away from local retailers which, in more marginal town centres such as Folkestone (490/500 in the town centre vitality ratings in 2014) could lead to retail unit vacancy rates increasing to the detriment of the town. Conversely, a market that attracts footfall has the potential to attract new businesses into the area on a permanent basis. Markets also provide an opportunity for independent retailers to test their products or services and success may also lead to a permanent presence in the town. In addition to the number of days being quantified, there ought to be some measures to ensure there is added value in terms of the quality of the offer. So perhaps there ought to be some conditions relating to quality of the market too. Would any of the following be permissible in planning terms e.g.

- 1) Each year, local businesses to be consulted on a programme of markets and events for the ensuing year.

Reason: To ensure local retailers support the programme, can align with their own marketing and engage with activities proposed.

2) The type of market should be 'speciality' with no market having more than 10% of traders that compete directly with permanent independent traders in Folkestone town centre. Reason: To extend range and quality of goods available in the town.

3) The market hours of operation to extend to 11 pm Reason: To extend the life of the town centre beyond 6pm and increase its commercial vitality.

4) The market should be operated to improve the image and visual appearance of Folkestone town centre. Reason: To ensure the standards, equipment and materials are of high quality that add to the town centre.

Fire Safety Officer Kent Fire and Rescue

No response received. Expiry date 10.11.2017

Kent County Constabulary

No response received. Expiry date 10.11.2017

South East Ambulance

No response received. Expiry date 10.11.2017

5.0 PUBLICITY

5.1 Neighbours notified by letter. Expiry date 02.11.2017

5.2 Site Notice displayed. Expiry date 16.11.2017

5.3 Press Notice. Expiry date 16.11.2017

6.0 REPRESENTATIONS

6.1 Four letters/emails received objecting on the following grounds:

- Poorly constructed application with no supporting information
- The red line meets the existing street trading area which could cause conflict
- Restricted to day time activity only, ignoring the economy might benefit from evening or night markets
- Request additional information to be provided (including, but not limited to, supporting statement, business plan, statement of consultation, justification for number of events and markets, conditions to restrict the permission if successful)
- The proposal conflicts with the Council's street trading policy

- Gives no information about the types of events
- The application has been made by Folkestone Town Centre Management but does not state whether this organisation is a charity, limited company or other organisation
- Local businesses should be consulted yearly on a programme of markets and events for the year
- The type of market should be speciality type markets
- The application states the persons operating the markets and events will be liable for their own waste and recycling but does not state how / when this will be inspected by FTTCM after an event
- The visual aspects of the market are important
- No information about how vehicle access will be controlled, lighting, water / washing facilities, hygiene (toilets), how the markets and events will be managed as required by the Street Trading Policy
- Will charities be treated differently and not be charged?
- Potential or uncontrolled charges
- Sales oriented installations such as private market trading should be controlled
- Has the applicant spoken to other stakeholders?
- Appears there will be little or no benefit to the town – purely commercial exercise that will not benefit the local economy and will detract spend from local shops and existing market traders
- Can evidence be provided for the 'model' of the events and markets which has been adapted from Canterbury, Ashford, and Maidstone etc.?
- Are the tents in the precinct meant to be the Christmas markets?

7.0 RELEVANT POLICY GUIDANCE

- 7.1 The full headings for the policies are attached to the schedule of planning matters at Appendix 1.
- 7.2 The following policies of the Shepway District Local Plan Review apply:
SD1 BE1 BE5
- 7.3 The following policies of the Shepway Local Plan Core Strategy apply:
DSD SS1 SS3 SS4 CSD6
- 7.4 The following Supplementary Planning Documents and Government Guidance apply:

8.0 APPRAISAL

Background

- 8.1 The application site was granted temporary planning permission in 2000 for use of the land as a street market on Thursdays and Saturdays as an extension to the existing street market at the lower end of Sandgate Road and Guildhall Street. This permission was a temporary permission and expired in 2002, therefore no planning permission remains in place on the application site for use of the land as a street market.

Relevant Material Planning Considerations

- 8.2 The main issues to be considered are the impact on the vitality and viability of the town centre, the design and visual impact, the impact on amenities of the neighbouring properties and highway issues.
- 8.3 Issues such as the licence for the market or Shepway's Street Trading Policy are not planning considerations as they are dealt with under a separate legislative regime which has different considerations. These two regimes are designed to be separate and should therefore not overlap in terms of conditions.

Policy

- 8.4 Paragraph 23 of the NPPF states "local planning authorities should retain and enhance existing markets and, where appropriate, re-introduce or create new ones, ensuring that markets remain attractive and competitive".
- 8.5 Core Strategy policy SS4 states a town centre first policy will operate for applicable uses in line with national policy. Potential town centre activities should be located sequentially, looking firstly at locations within town centres and with regard to their impact on the vitality and viability of the defined town centre.

Impact on town centre

- 8.6 The proposed market is a town centre use, therefore the town centre is the ideal location for a market as it is a highly sustainable location which will attract footfall and increase the vitality of the existing town centre allowing shoppers (and those visiting for other town centre uses) to combine their visits to the town centre for more than one reason. Providing such a use within a town centre helps to encourage more visits to the town centre helping to boost existing retail uses and other services. National planning policy encourages the creation of new markets where appropriate. It is considered that the proposed site is an appropriate location for a street

market and, with adequate conditions, it can be ensured that the market is appropriate in regard to vitality of the town centre, visual appearance and neighbouring amenity.

- 8.7 With regards to the comments received from Economic Development, whilst officers share their aim to have a high quality market which helps to support and boost the vitality of the town centre and understand their desire to have a comprehensive approach to the markets within the town centre, we can only consider what has been proposed within the application and material planning considerations. The conditions recommended by Economic Development such as requiring the market to operate in the evenings and specifying the type of goods sold (controlling competition) go above what can be required under a planning permission and therefore cannot be controlled by planning condition.
- 8.8 The proposed layout plan shows the market to have a maximum width of 6 metres for both the general market and the Christmas market. Sandgate Road at this point has a width of over 18 metres which would allow a gap of approximately 6 metres on either side of the market stalls to the adjacent shops. This is considered to be sufficient to allow easy access to the existing retail units so as to not impact on the viability of these stores and not impact on the pedestrian traffic through the high street. As such, the proposed layout of the market is considered to maintain the vitality of the existing town centre.
- 8.9 National policy requires new markets to remain competitive, however, while planning can consider the impact on the town centre as a whole, it cannot directly control competition or be prescriptive in the types of goods sold. Putting too many conditions or restrictions on the market is not encouraging competition, but restricting it. One objection received recommended the market should only be used as an artisan market, however, this is outside the scope of what planning can control. The market should be able to adapt to demand and changing market conditions and therefore imposing the types of goods to be sold would be too restrictive and would not allow the market to adapt to trends in demand, thereby restricting competition, contrary to paragraph 23 of the NPPF.

Visual Amenity/Design

- 8.10 The proposed stalls would be provided by the operator rather than the individual stall holders and would therefore have the same visual appearance, rather than a clutter of different stalls. The proposed Christmas market (proposed to start in 2018) would use wooden huts which are considered to be high quality market stalls. These would be a more permanent feature within the town centre and would be erected for the majority of December. For the rest of the year, the market stalls would be frame tents but again would all have the same uniform appearance creating a tidier appearance to the market.
- 8.11 As the applicant has confirmed all the markets would be provided by the same company and would therefore have a uniform appearance, it is

considered reasonable to condition that the stalls be of a uniform appearance and maintained in good condition in order to preserve the visual amenity of the area.

Neighbouring Amenity

- 8.12 The proposed market would be in a town centre location which is busy with a variety of different activities occurring throughout the day. The application proposes for the market to close at 6pm on Mondays to Saturdays and at 4pm on Sundays and Bank Holidays. These times are considered to be in keeping with the existing town centre activity of this location and would not cause significant disturbance to neighbouring residents above and beyond the existing town centre activities.

Highways

- 8.13 The site is within a highly sustainable town centre location where people will be visiting not just the market, but also other town centre facilities, thereby reducing the number of trips needed. Due to the sustainable location of the site, no additional parking is needed as there are a number of car parks in close proximity to the site, along with good connectivity to public transport with both the bus centre and Folkestone Central Train Station within walking distance.
- 8.14 It is therefore considered that the proposal is in a highly sustainable location and will have no detrimental impact in terms of parking and highways.

Other Issues

- 8.15 As set out above, matters relating to the street traders licence and Shepway's Street Trading Policy are licensing issues and therefore not relevant to the determination of this planning application.
- 8.16 The application form states that refuse and recycling will be removed by individuals operating the market stalls. It is considered reasonable to impose a condition which requires refuse and recycling to be cleared at the end of every day that the market is operational.

Local Finance Considerations

- 8.17 Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the Act defines a local finance consideration as a grant or other financial assistance that has been, that will, or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.
- 8.18 In accordance with policy SS5 of the Shepway Core Strategy Local Plan the Council has introduced a Community Infrastructure Levy (CIL) scheme,

which in part replaces planning obligations for infrastructure improvements in the area. This application is not CIL liable as the proposal does not involve the creation of additional floorspace. The New Homes Bonus is not relevant in this case due to the nature of the proposal.

Human Rights

8.19 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

8.20 This application is reported to Committee as the recommendation is contrary to the views of Folkestone Town Council.

9.0 SUMMARY

9.1 National and local policies support market uses in town centre locations, subject to them being appropriate. It is considered that with the recommended conditions imposed, the proposed market would be appropriate for the town centre and would increase competition and help to attract more visitors to the town centre, whilst preserving the visual amenity of the area and neighbouring amenity.

10.0 BACKGROUND DOCUMENTS

10.1 The consultation responses set out at Section 4.0 and any representations at Section 6.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

RECOMMENDATION – That planning permission be granted subject to the following conditions:

1. Development to begin within 3 years
2. Layout / number of stalls (as shown on submitted plans) with stalls facing outward
3. Days of operation – other than December, each market event to last no more than 7 consecutive days with a minimum of 5 days between market events
4. Stalls to be removed at the end of each market event

5. Refuse and recycling to be cleared at the end of every day the market is in operation
 6. All market stalls should be uniform in appearance and maintained in good condition by the operators of the market
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