



Reigate & Banstead
BOROUGH COUNCIL
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Signed off by	Head of Planning
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To	Council
Date	Thursday, 30 November 2023
Executive Member	Portfolio Holder for Place, Planning and Regulatory Services

Key Decision Required	N
Wards Affected	Hooley, Merstham and Netherne;

Subject	Petition: Save The Oriental in Merstham
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Recommendations
(i) That Full Council considers the petition received seeking to save The Oriental takeaway and restore other shops in the Nutfield Road parade, Merstham.
Executive Summary
Under the Council's Petition Scheme, any petition with more than 400 signatures is referred to the Council for debate. The Council has received an online petition of 245 signatures and a paper version with 437 signatures calling on the council to '...do everything that they can to retain this takeaway and restore this parade of shops, including to engage with the landlord to seek agreement to save this remaining business, and retain this important local centre'.

Statutory Powers
1. The Localism Act 2011 revoked requirements placed on Councils in relation to petitions, however, Reigate & Banstead Borough Council made the decision to retain its then existing Petition Scheme.

2. The Council’s current Petition Scheme, dated 13 March 2019, sets out how the Council will respond to petitions, and the type of response the Council will provide, based on the number of signatories to the petition.

3. The table below summarises the Council’s approach:

Number of signatories	Response
Less than 20	Response from Officer (treated as standard correspondence)
20-199	Response from the relevant Member of the Executive
At least 200	Referred to the Executive
At least 400	Debated at a meeting of the Full Council

4. Procedure Rules 2, 3, and 4 in the Constitution require adherence to the Petition Scheme.

Key Information

The Petition

1. The petition calls for *“We the undersigned petition the council to acknowledge that The Oriental takeaway, on Nutfield Road, has been serving people in Merstham for 23 years. We understand that a single landlord owns the whole parade on this side of Nutfield Road. We oppose the process that has led to all the rest of the shops in this parade being lost and oppose the proposed loss of this takeaway. We believe that these shops should be retained for the benefit of the community with affordable rents and favourable terms as commercial units. We call upon Executive Member for Place, Planning and Regulatory Services, Cllr Michalowski, with support from the Planning Policy Team to do everything that they can to retain this takeaway and restore this parade of shops, including to engage with the landlord to seek agreement to save this remaining business, and retain this important local centre.”*
2. The takeaway in question is The Oriental which is 52 Nutfield Road, Merstham within a designated local shopping parade.
3. The takeaway is still open and operating (at the time of this report being written) but is part of a parade which has seen retail tenants vacate and the units can subsequently gaining prior approval for their conversion to residential use.

Background to Council control over evictions or changes of use

4. The takeaway is, like the remainder of this parade, understood to be owned by a landlord who has historically rented the units out for retail or commercial use. This landlord is understood to have served notice of eviction on the of the retail/commercial tenants to pursue the change of use of the units to residential use.
5. The Council has no legal or other powers to intervene in such evictions.
6. A number of ‘prior approval’ applications have been made subsequent to the retail units in the parade being vacated to convert them to residential use, under Class MA of the General Permitted Development Order.

7. Class MA came into force in August 2021, despite robust objection from the Council to the Government Consultation proposing it. Class MA allows for Use Class E units to be converted to residential subject to various criteria, including that:

- The unit has been vacant for three months or more;
- The building has been in Class E use for the past two years or more;
- The floorspace of the unit does not exceed 1500 square metres;
- The building is not listed (or similarly categorised);
- The building is not in an AONB, National Park etc;
- If the site is operated under an agricultural tenancy;

If the above criteria are met then the process moves to a prior approval assessment requiring the following impacts to be considered:

- Transport;
- Contamination;
- Flooding;
- Noise
- Adequacy of natural light; and
- The impact of potential industrial uses in the surrounding area.

8. The Council, as local planning authority, must determine applications for prior approval under Class MA against the above criteria and make an assessment against the impacts listed.

9. If the criteria are met (under the first set of bullets) and there are no significant or harmful impacts when assessed against the second set of bullets, then prior approval must be granted by the local planning authority to enable the change of use to proceed.

10. Unlike previous prior approval regimes or planning applications, there is no power for the local planning authority to consider the desirability of the proposal or its impact upon local shopping needs, convenience or the impacts upon the viability, vitality or sustainability of the shopping area, and it is instead a rudimentary assessment process.

11. On the above basis prior approval has been obtained to convert the neighbouring retail uses to residential after the premises had been vacated.

Considerations for The Oriental

12. The Council has no power to intervene in private property matters which are subject to civil law but outside Council control. The cessation of the tenancy or eviction of the tenants is not therefore something that the Council can control or prevent.

13. Similarly the Council has no formal power to engage with the landlord in an attempt to persuade them to agree to save the takeaway. However, neither is there anything preventing any person or party from doing so.

14. There is not yet any planning or prior approval application relating to the takeaway. If there were, this would be under Class M of the Permitted Development Order (as a *sui generis* hot-food takeaway rather than retail unit) although the impact

assessment that would be undertaken if such an application were to be submitted is substantially the same as the one that would be undertaken under Class MA (above).

15. The Council, as local planning authority, could not predetermine the outcome of any application that may be made and would need to make a determination solely against the permitted development/prior approval criteria applicable.
16. Local planning authorities can remove permitted development rights through Article 4 Directions and the Executive recently agreed a motion to consider making such a direction, pending the gathering of evidence to assess whether such a direction would be justified, including the conclusions of the Retail Needs Assessment recently instructed and due in Feb/March 2024. The timeframe for such Directions to take effect is typically between one and two years however, and any Direction made before the necessary evidence has been gathered would make the Council liable to pay compensation to the landlord of potentially hundreds of thousands of pounds or more for loss of value to the property.

Options

17. The Petition Scheme provides that Council will decide how to respond to the petition at this meeting. The options for the Council in relation to the petition are:
18. Option 1: To refer the petition to the Executive or Executive decision maker for consideration;
19. Option 2: To support the action requested on the petition; or
20. Option 3: To note the request of the petitioners and take no further action.

Legal Implications

21. There are no legal implications associated with Options 1 and 3. However, as there is no legal power available to the Council to enable it intervene in any potential eviction, Option 2 may be *ultra vires*.

Financial Implications

22. There would be financial implications for the Council were it to agree to Option 2 and undertake any of the following:
 - Any pre-determination of a potential planning application or a potential application for prior approval (through defence of High Court challenge)
 - Refusal of such an application on unsustainable planning grounds (through appeal costs); and
 - Issuance of an immediate Article 4 Direction removing permitted development rights (through compensation payable to the landlord for any loss of value to the relevant property)

Equalities Implications

23. The Council has a statutory duty to consider and demonstrate equalities implications in all of its decisions.

24. There are no equalities implications associated with the proposal.

Communication Implications

25. The Communications team have responded to a number of enquiries and social media posts regarding this takeaway and parade and will continue to respond to future posts or enquiries.

26. There are no additional communications implications relating to the options arising from this petition.

Environmental Sustainability Implications

27. The Council is committed to taking action to address environmental sustainability and climate change issues. However none of the options present any environmental sustainability implications.

Risk Management Considerations

28. There are no additional risk management considerations relating to the options arising from this petition.

Policy Framework

29. The Policy Framework relating to the petition is covered in paragraphs 1 and 2.

30. Consideration of any future application for planning permission would be against policies in the Core Strategy and Development Management Plan

31. Consideration of any permitted development/prior approval application would be against the provisions of the General Permitted Development Order 2015 (as amended).

Background Powers

1. Save the Oriental in Merstham petition - <https://reigate-banstead.moderngov.co.uk/mgEPetitionDisplay.aspx?ID=59&RPID=3614913&HPIID=3614913>

2. Council petition scheme: <https://reigate-banstead.moderngov.co.uk/documents/s4086/Petitions%20Scheme.pdf>