

DCL/20/59

Application No: 20/1918/FH

Location of Site: 303 Cheriton Road, Folkestone, Kent, CT19 4BG

Development: Change of use and conversion of the ground floor retail unit and office into a residential unit including external alterations to front (north) elevation.

Applicant: Mr Neil Cufley

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Officer Contact: Katy Claw

SUMMARY

This application site relates to the proposed change of use to residential of an existing ground floor commercial unit located to the south of Cheriton Road within the settlement of Folkestone. The building is three storeys in height and includes 2 flats at first and second floor levels. The site falls within the Cheriton District Centre, as defined within policy RL5 of the Places and Polices Local Plan, which seeks to preserve the vitality and viability of the centre. The policy allows for planning permission for the change of use of town centre uses to be granted where certain criteria are met and the report concludes that these criteria have not been met, and planning permission should be refused. Furthermore, the proposal, if permitted, would result in the loss of a shopfront and the creation of a domestic frontage, thereby adding to the general erosion of the vitality and viability of the shopping street.

RECOMMENDATION:

That planning permission be refused for the reason(s) set out at the end of the report.
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1. INTRODUCTION

1.1. The application is reported to Committee at the request of Cllr Peter Gane.

2. SITE AND SURROUNDINGS

2.1 The site lies on the south side of Cheriton Road, between 301 Cheriton Road (The Windmill café) which is a corner plot and 305 Cheriton Road (a residential unit). The

DCL/20/59

host building reads as part of 301 Cheriton Road, being set forward of the build line when compared to the residential units of 305-315 Cheriton Road. The residential units of No.s 305-315 are all set back with small front amenity areas and the ground floors all being accessed via a small flight of external stairs. The end plot of this row (No.317 Cheriton Road) is also set forward of the build line and also has a commercial unit at ground floor and also falls within the designated 'Cheriton District Centre'. In the context of the streetscene, these corner plots featuring commercial units at ground floor appear as projecting book ends to the row of terraced residential properties.

- 2.2 The building is three stories in height and includes 2 flats at first and second floor levels. At ground floor front (north) elevation are two entrance doors, one to the right-hand side leading to the upper floor flats and one that allows direct access to the ground floor commercial unit. There is also a large shop-front style window.
- 2.3 The ground floor retail unit is currently vacant however the evidence submitted with the application indicates that the premises was last occupied by an internet café/computer repair shop (A1). The supporting documents also indicate that the site also contained an insurance broker's office (A2) to the rear which is consistent in part with the planning history, and consistent with the submitted existing ground floor plans. Due to the recent amendments to the Use Classes Order (amended 1 September 2020), Class A1 has been replaced by Class E(a) and Class A2 has been replaced with Class E(c)(i).
- 2.4 The site is approximately 98.70sqm. The ground floor retail unit is approximately 27.8sqm and the office is approximately 20.2sqm. There is an outdoor space of approximately 25.70sqm.
- 2.5 The site is located within the District Centre of Cheriton with a mix of residential and commercial, including shops, food outlets, a petrol station, garage repair/workshops and church, in close proximity to the application site. Figure 1 below shows some of the extent of the Cheriton shopping area with the application site highlighted in yellow. The shopping area continues along at the northwest point of the image down to the junction of Cheriton Road with Risborough Lane.
- 2.6 The following apply to the site:
 - Within the settlement boundary
 - Cheriton District Centre
- 2.7 A site location plan is also attached to this report as **Appendix 1**.

FIGURE 1

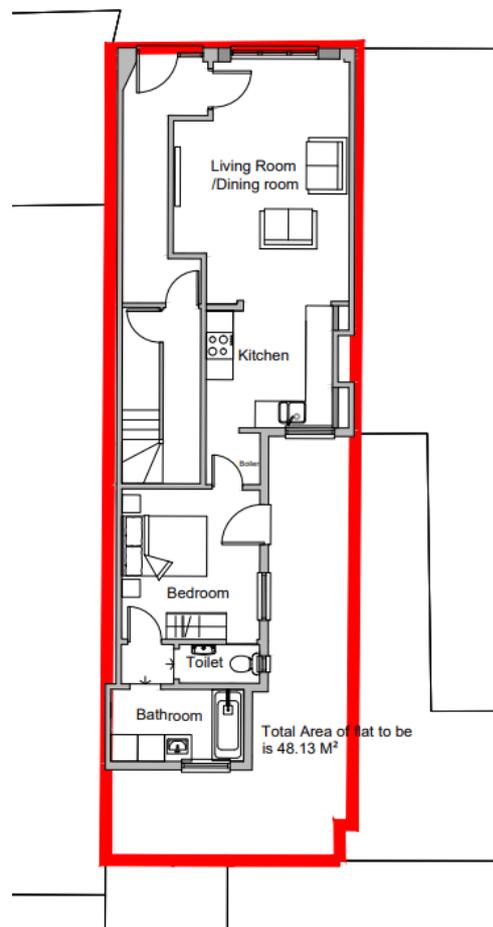
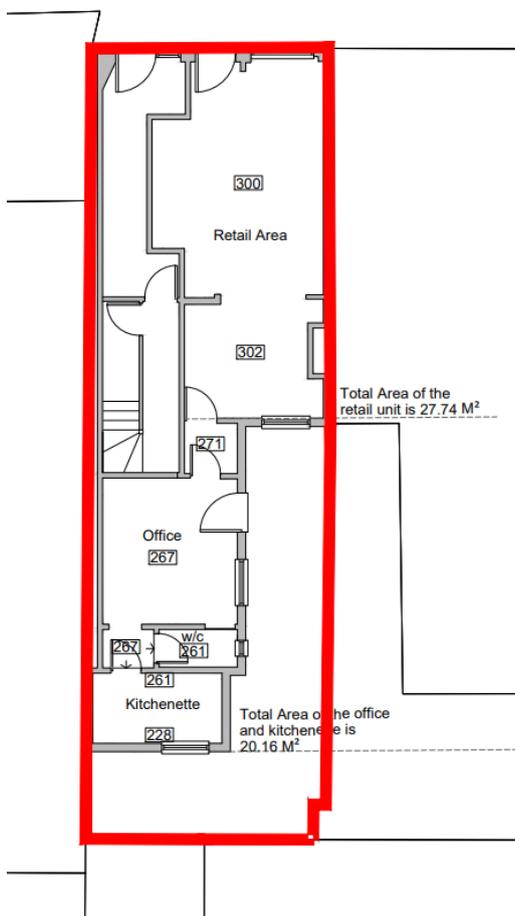


3. PROPOSAL

3.1 Planning permission is sought for the change of use and conversion of the ground floor retail/office area from Class E(a) and Class E(c)(i) (formally Class A1/A2), to a one bedroom residential flat (Class C3). The flat would comprise an open plan living/dining room and kitchen with a double bedroom, WC and bathroom to the rear, totalling a liveable area of approximately 48sqm. The flat would have access to the existing courtyard via an existing side door.

FIGURE 2 – existing ground floor

FIGURE 3 – proposed ground floor



- 3.2 The proposed conversion would involve alterations to the frontage of the building. The existing shopfront window would be removed and replaced with a smaller window serving the flat. The door to the shop would be removed and the new flat would use the front door that currently serves the other 2 existing flats. Part of the existing brickwork at ground floor level on the front façade would be rendered. The windows and doors would be white uPVC to match the units on the upper floors.

FIGURE 4 – existing front elevation



FIGURE 5 – proposed front elevation



- 3.3 In addition to the plans, the application has been accompanied by two reports:

Design and Access Statement

- 3.4 This document sets out the site, its location, planning history, the scale, amount, layout, appearance and access of development. The document says that the site has been vacant for a number of years and that the shop is not attractive for either retail or office use. The document goes on to say that there is no change to the scale or amount of 303 Cheriton Road, the layout will retain the existing internal and external areas of the building with alterations proposed to the access to the site, including reconfiguring the front façade. It also states that there are also good links with public transport.

Viability Statement

- 3.5 This document sets out the location and existing use of the development. It states that the site has been vacant for over 5 years and that an application was submitted in 2008 for change of use and a statement within that application shows that the previous owner marketed the space for over 5 months without interest. The statement looks at other vacant sites in the area, listing 11 other nearby sites within the vicinity, concluding that supply exceeds the demand and that any business looking to establish themselves would not be harmed by the loss of the ground floor space at the application site. The statement goes on to say that the previous conversion to upper floor flats has impacted the ground floor display window which is now small and compromises the

DCL/20/59

opportunity for display and that this has contributed to the struggle to find tenants for the unit. The constraints of the site mean that there are far more attractive units in the area, a number of which are also vacant. The statement concludes that the site would be better suited to a residential unit which would be swiftly occupied and help regenerate a failing commercial space.

- 3.6 As set out within the National Planning Policy Guidance (NPPG), all planning viability assessments must be publicised alongside other information supporting the application. The above mentioned viability report was made public on 27th November 2020 and has remained as such throughout the lifetime of the application process.

4. RELEVANT PLANNING HISTORY

- 4.1 The relevant planning history for the site is as follows:

85/0032/SH	Change of use to builder office and store and insurance office with offices above.	Approved
86/0858/SH	Use of ground floor for the sale of hot Chinese take-away food.	Refused
Y03/0576/SH	Change of use of first floor offices to a self-contained flat, addition of a second floor to provide a further self-contained flat and the installation of a replacement shopfront.	Approved
Y08/0816/SH	Change of use from retail (Class A1) to a self-contained flat.	Refused
Y19/0889/FH	Change of use of the existing ground floor retail unit (Class A1) and office (Class A2) into a one bedroom residential flat (Class C3).	Withdrawn
20/1315/FH/PA	Determination as to whether the prior approval of the Local Planning Authority is required for the conversion of a ground floor retail unit (Class A1) (27.74sqm) and office (Class A2) (20.16sqm) into a residential unit (Class C3) with a total floor area of 48.13sqm.	Refused

5. CONSULTATION RESPONSES

- 5.1 The consultation responses are summarised below.

Consultees

Folkestone Town Council: No objection to the proposal.

Local Residents Comments

5.2 13 neighbours directly consulted. 0 letters of objection, 0 letters of support received and 0 letters received neither supporting nor objecting to the application.

5.3 Responses are available in full on the planning file on the Council's website:

<https://searchplanapps.folkestone-hythe.gov.uk/online-applications/>

6. RELEVANT PLANNING POLICY

6.1 The Development Plan comprises the Places and Policies Local Plan 2020 and the Core Strategy Local Plan 2013.

6.2 The Folkestone & Hythe District Council Core Strategy Review Submission Draft (2019) was published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations (2012) for public consultation and as been subject to an Examination in Public in January 2021. As such its policies should be afforded weight where there are not significant unresolved objections.

6.3 The relevant development plan policies are as follows:-

Places and Policies Local Plan 2020

Policy HB1 – Quality Places through Design

Policy HB3 – Internal and External Space Standards

Policy T2 – Parking Standards

Policy T5 – Cycle parking

Policy RL5 – Cheriton District Centre

Shepway Local Plan Core Strategy (2013)

Policy DSD – Delivering Sustainable Development

Policy SS1 – District Spatial Strategy

Policy SS3 – Place Shaping and Sustainable Settlements Strategy

Core Strategy Review Submission draft (2019)

Policy SS1 – District Spatial Strategy

Policy SS3 – Place Shaping and Sustainable Settlements Strategy

6.4 The following are also material considerations to the determination of this application.

Supplementary Planning Guidance/Documents

Government Advice

National Planning Policy Framework (NPPF) 2019

DCL/20/59

Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF. The following sections of the NPPF are relevant to this application:-

Paragraph 11 & 12 - Presumption in favour of sustainable development.

Paragraph 47 - Applications for planning permission be determined in accordance with the development plan.

Paragraph 57 – Need and weight given to viability statements.

Paragraph 80 – Investing in business, supporting economic growth, taking into account local business needs and wider opportunities for development.

Paragraph 85 – Support the role that town centres play. Define a hierarchy and promote their long-term vitality and viability.

Paragraph 92 – Provide the social, recreational and cultural facilities and services the community needs.

Paragraph 121 - take a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in plans, provided this would not undermine key economic sectors or sites or the vitality and viability of town centres.

Paragraph 124 - creation of high quality buildings and places is fundamental to what the planning and development process should achieve

Paragraph 127 – ensure that development will function well and add to the overall quality of the area, visually attractive, sympathetic to local character and history, maintain a strong sense of place, appropriate amount and mix of development, safe, inclusive and accessible.

National Planning Policy Guidance (NPPG)

Design: process and tools
Effective Use of Land

National Design Guide October 2019

C1 - Understand and relate well to the site, its local and wider context

I2 - Well-designed, high quality and attractive

Paragraph 53 '*Well designed places are visually attractive and aim to delight their occupants and passers-by*'.

7. APPRAISAL

7.1 In light of the above the main issues for consideration are:

- a) Principle of development / loss of ground floor commercial unit in a shopping area
 - b) Loss of an active shopfront to be replaced with a frontage of domestic appearance
 - c) Amenity of future occupiers
 - d) Amenity of neighbouring properties
 - e) Storage of refuse
 - f) Secure bicycle storage
 - g) Parking and transport / sustainability
- a) Principle of development / loss of ground floor commercial unit in a shopping area**

7.2 The Places and Policies Local Plan (PPLP) policy RL5 says that within the District Centre of Cheriton, as defined on the policies map (as shown in Fig.1), proposals for the development, redevelopment or change of use to Class A uses (1 to 5) (shops, financial and professional services, restaurants and cafes, drinking establishments and hot food takeaways) will be permitted. The policy states that appropriate sui generis uses will be permitted providing that they create an active frontage with a shopfront display and positively contribute towards providing a high quality environment and enhance the vitality and viability of the area. Other town centre uses will be permitted provided that they would not create a continuous frontage of three or more A5 units and meet the requirements in Policy HW1: Promoting Healthier Food Environments.

The Policy also states that planning permission will be granted for change from a town centre use where:

- 1) The proposed use is not detrimental to residential amenity;
 - 2) There is evidence to demonstrate that there is no demand for the continued use of the premises for retail or community uses;
 - 3) The existing use is no longer viable and the property has been actively marketed at a reasonable rate for a period of at least 12 months and no reasonable offers have been made; and
 - 4) The proposed use does not threaten the vitality and viability of the district centre and retains an active frontage at street level.
- 7.3 Paragraph 12 of the NPPF promotes the presumption in favour of sustainable development but makes clear that the presumption of sustainable development does

DCL/20/59

not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date plan, permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

- 7.4 Policy RL5 of the PPLP seeks to retain the vitality and viability of the district centre through the retention of a healthy proportion of retail uses. In light of this, and the above-mentioned policy requirements, it is considered that the proposed change of use to residential would be contrary to this policy unless the 4 criteria listed in the policy, and as set out above are met.
- 7.5 With regards to point 1 of Policy RL5, this is addressed in more detail below under paragraph 10.11 but it is considered that the proposed use of the site as a one bedroom residential flat would not have a detrimental impact upon the amenity of existing residential units within the host building or upon other nearby residential properties for the reasons set out in paragraph 10.11.
- 7.6 With regard to points 2 & 3 of Policy RL5, the onus is on the applicant to demonstrate that there is no demand for the continued use for retail or community uses and that the existing use is no longer viable and has been actively marketed. In this case, the application has been accompanied by a supporting viability statement. The viability statement advises that the site has been vacant for over 5 years and indicates that the site was marketed for a period of 5 months in 2008 at the time of an earlier planning application (Y08/08166/SH), which Members will note was also refused on the grounds of lack of supporting evidence.
- 7.7 From the information obtained from the 2008 application file, there is no evidence of the marketing as suggested by the Applicant (e.g. a copy of an estate agent listing). The only reference to marketing was contained within the submitted Design & Access Statement (DAS) which stated that *'the existing shop has been vacant for the past 5 months and although advertised for rental there has been no interest. My client has therefore decided on financial grounds that the best solution will be to convert the shop into a residential flat'*.
- 7.8 In order to be taken as the most up-to-date evidence of lack of interest to satisfy the criteria in point 3) of the policy, the marketing should have taken place in the time leading up to the submission of the application. No evidence of marketing was submitted for the 2008 application, and reliance on what was submitted at that time approximately 13 years ago, does not satisfy point 3) of the policy at this point in time. No specific details or marketing particulars of the site have been submitted with the application, and therefore it cannot be established whether there is no demand for the site in its current use nor whether any reasonable offers have been made for its continued use in that regard.
- 7.9 Whilst not a requirement of Policy RL5, in further support of the lack of demand, the applicant's viability statement lists 11 vacant sites with accompanying streetscene photos. These properties are listed on the basis of an observation survey at street level of vacant frontages. Whilst it is accepted that the retail units listed are currently

DCL/20/59

vacant/unoccupied, no evidence has been provided to demonstrate whether or not all of these have been, or are still under, active advertisement, either for sale or rent. For example, 353 Cheriton High Street (former HSBC bank listed as 'D' in the viability statement) has recently been granted planning permission for extension and conversion with the ground floor office to be retained but the site is currently vacant given the intended conversion works. In light of the above, it cannot be presumed at face value from external observation alone that each property listed in the viability statement is not viable or not under offer. Notwithstanding the reliability of the detail relating to other similar sites within the vicinity, the information has limited weight when considering the viability of the application site itself. In order to be acceptable in policy terms, the criteria in the policy have to be met, and the submission of other "vacant" sites in the locality is not one of the criteria. On the basis of the information submitted, it is not considered that the proposal satisfies the criteria set out in points 2 and 3 of Policy RL5 such that planning permission could be granted.

b) Loss of an active shopfront to be replaced with a frontage of domestic appearance

- 7.10 Point 4 of Policy RL5 seeks to reinforce the vitality and viability of the district centre by resisting the loss of active frontages at street level. Whilst on the edge of the shopping area, with other residential development in close proximity to the site, the domestic nature of the proposed use would not be characteristic of the shopping area in which it is located, which is made up of a mix of retail, café and office uses. The introduction of residential uses also inevitably result in the addition of domestic frontages.
- 7.11 In this case, the proposed development would result in the total loss of a shopfront and the creation of a wholly domestic frontage. It is accepted that half of the original shopfront (the right side shop window) has already been lost by a door serving the upper floor flats, which occurred during the conversion as approved under an earlier consent (Y03/0576/SH), but this proposal would result in the wholesale loss of the shopfront, reinforcing the points set out above. It is therefore concluded that the proposal would also fail to satisfy point 4 of Policy RL5.

c) Amenity of future occupiers

- 7.12 Policy HB3 of the PPLP requires new build and conversions to residential to meet the Council's space standards. The application proposes to provide a 1 bedroom, 2 person flat, which is required under policy HB3 to provide 50sqm of internal floor space and 1.5sqm of built-in storage with private usable balcony area with a minimum depth of 1.5m, as long as this does not reduce the privacy of neighbouring dwellings.
- 7.13 In this case the unit would provide 48.13sqm as set out on the proposed floor plan. The proposal also shows a wardrobe within the bedroom for storage and it is likely that other small areas of storage could be accommodated within the flat. It is noted that the internal space provided results in a shortfall of 1.87sqm against the policy minimum. It would be difficult to justify a ground of refusal based on this shortfall.
- 7.14 With regard to outside space it is accepted that the flat cannot provide a balcony and policy HB3 goes on to say that the Council will only consider variations to the external space standards if it can be demonstrated that such an approach is needed

DCL/20/59

to reflect the character of the area. In this case the application sets out that the flat would have use of the rear courtyard area, and given this and the fact that it is located within a sustainable urban area, a short walk from public open spaces, it is considered to be acceptable.

- 7.15 The proposed flat would share a party wall with the adjoining café. The current use of the neighbouring site as a café, or as a retail use in general, is unlikely to generate significant levels of noise as the café use/seating area for customers is confined to the internal ground floor space only. The nature of a retail business in this location is such that it would not likely give rise to excessive noise disturbance during unsocial hours. During the site visit it was not possible to ascertain the location of any flue extraction system associated with the café use but cooking here would be likely be limited to frying foods on a scale that may not require a large industrial extraction system. There are other nearby residential units to the immediate rear of the café that appear as relatively new builds, as well as the flats already established in 303 Cheriton Road. All seemingly co-exist well together and as such there are no substantial grounds for refusal on the basis of noise/smells from the ground floor café unit at 301 Cheriton Road. With that in mind it is considered that the amenities of the future occupiers would not be unduly impacted by being in such close proximity to a commercial unit.

d) Amenity of neighbouring properties

- 7.16 In this case the upper floors of the host building are already in residential use and self-contained residential units stacked on one another is common however the layout of development such as this would normally encourage similar uses below each other to mitigate against noise between residential units. In this case there would be a requirement under Building Regulations to install noise mitigation in terms of sound proofing, but it is not considered that the general layout of the residential accommodation would give rise to adverse noise impacts in this regard. The adjoining café shares a party wall with the application site but the proposed use of the site as a one bedroom residential flat would not have a detrimental impact upon the function of this commercial site.

e) Storage of refuse

- 7.17 There is sufficient outdoor space within the courtyard area to provide a storage area for refuse and this can be secured by condition. The Council's waste department would provide the residents with details regarding the necessary refuse receptacles required for a 1 bed flat.

f) Secure bicycle storage

- 7.18 Policy T5 PPLP says that 1 bicycle space should be provided per bedroom. The plans do not show adequate space for the storage of a bicycle but there is considered to be sufficient outdoor space and secure bicycle storage could be secured by condition. It is accepted that this would eat into the available amenity space but there is a desire to support sustainable modes of transportation in line with policy.

g) Parking and transport / sustainability

- 7.19 This proposal falls outside of the protocol under which KCC highways provide comments and so they were not formally consulted.

DCL/20/59

- 7.20 Policy T2 PPLP says that for 1 and 2 bed units in this type of location, 1 parking space per unit should be provided. The site cannot provide the required amount of parking provision but it is accepted that this is an existing building and off-street parking is also not available for the existing commercial unit. Given the location of the site, within close proximity of shops along Cheriton Road and Cheriton High Street it would be unreasonable to refuse the application on the grounds of lack of parking provision in this instance. Parking on street is time limited during certain hours Monday-Saturday but residents would be able to park in the evening and there is unrestricted parking in some of the side roads, albeit it a number of these are close to capacity.
- 7.21 In conclusion, the proposed unit is unlikely to significantly place increased demand upon the amount of on-street parking spaces previously used for the site as a commercial unit, taking into account staff and customers.

Environmental Impact Assessment

- 7.22 In accordance with the EIA Regulations 2017, this development has been considered in light of Schedules 1& 2 of the Regulations and it is not considered to fall within either category and as such does not require screening for likely significant environmental effects.

Local Finance Considerations

- 7.23 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. There is no CIL requirement for this development.
- 7.24 In accordance with policy SS5 of the 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. The CIL levy in the application area is charged at £0.00 per square metre for new residential floor space. This application is not liable for the CIL charge as it is a change of use and would not create any additional floor space.

Human Rights

- 7.25 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.

Public Sector Equality Duty

DCL/20/59

7.26 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

Working with the applicant

7.27 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner.

8.0 CONCLUSION

8.1 The application site falls within the Cheriton District Centre protected by Policy RL5 of the PPLP, and the application submission has failed to provide evidence to demonstrate that there is no demand for the continued use of the premises for retail or commercial uses. The application submission has also failed to demonstrate that the existing use is no longer viable and that the property has been actively marketed at a reasonable rate for a period of at least 12 months and no reasonable offer has been made, both of which are requirements with policy RL5 PPLP. Furthermore, the changes to the shopfront would result in a domestic appearance that would fail to satisfy policy RL5. The applicant has not provided a robust reason as to why local plan policy should not be adhered to in this instance.

9. BACKGROUND DOCUMENTS

9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

10. RECOMMENDATION

That planning permission be refused/for the following reason:

The application site is located within the Cheriton District Centre as defined in local planning policy RL5 of the Places and Policies Local Plan which states that planning permission will be granted for a change of use from a town centre use where a set list of criteria are met. The Local Planning Authority considers that the application submission has failed to provide evidence in line with the list of criteria as the submission has failed to demonstrate that there is no demand for the continued use of the premises for retail or commercial. The application submission has also failed to demonstrate that the existing use is no longer viable and that the property has been actively marketed at a reasonable rate for

DCL/20/59

a period of at least 12 months and no reasonable offer has been made. Further, the alterations to the front elevation would result in the loss of an active shop front by the removal of the shopfront window, resulting in the appearance of a domestic frontage. As such the proposal is contrary to the aims of local planning policy RL5 PPLP which seeks to protect the vitality and viability of the district centre and retain an active frontage at street level.