Development Management - Delegated Officer Report

Application Number: AWDM/0401/18 Recommendation – Issue Certificate

Site: Next, Holmbush Centre, Upper Shoreham Road, Shoreham-By-Sea

Proposal: Application for a Certificate of Lawfulness for proposed use to create an area for a Travel Agency concession at ground floor level.

Date of site visit: N/A

Neighbours checked: N/A

Additional neighbour notifications: N/A

Proposal, Site and Surroundings

This application relates to the Next store at Holmbush. A Certificate of Lawfulness is sort to introduce a travel agency concession on the ground floor towards the rear of the store. The travel agency would be run by a third party within a floor area of 46sqm. The supporting letter submitted with the application states that this represents less than 1% of the gross floorspace of the retail unit. The travel agency area would be accessed through the ground floor entrance to the existing store and would not be a separate planning unit.

The supporting letter advises that the travel agency would be similar to coffee shops which are now common in many larger stores and a number of examples of successful LDC applications for coffee shops have been submitted in support of this application.

Relevant site history

SU/23/92 – Homecare Retail Store And Garden Centre With Ancillary Accommodation, Service Area And Parking For 203 Cars

ADC/0389/10 – Extension of internal mezzanine and reconfiguration of service yard and garden centre

AWDM/0104/12 - Application for variation of condition 7 of planning permission ADC/0049/06 to enable continued use of former lobby at front of store by Virgin Holidays (at Tesco store)

Consultations

Adur & Worthing Councils: The **Solicitor** advises that the Certificate can be issued. She advises that there is a good argument that the works proposed, because they are internal only, do not comprise “development” for the purposes of section 55 TCPA. However, an earlier permission should be checked to ensure that it does not include a provision which prevents the carrying out of such works.

She further advises that a travel agent is use class A1, and therefore within the same use class as the current shop. We still however need to consider whether there has been a “material change of use”. Uses that are ancillary or incidental to the primary use of the land do not involve “development”. There is a good argument that the travel agency proposal is ancillary/incidental to the primary use of the unit as a retail shop. In the case of Maldon District Council, ex parte Pattani [1999] the Court of Appeal held that the addition of a pharmacy in a supermarket was not in breach of planning control because the pharmacy use was also a retail use.

The Virgin travel concession at the nearby Tesco store at the Holmbush Centre was permitted, by way of a change of condition, on 22/02/2012. The reasons given by ADC were that the travel concession would only use a very minor amount of floorspace, is not self-contained, having no separate entrance. Further, it was considered “sufficiently complementary and ancillary nature as not to contravene the ‘town centre first’ approach of PPS4”.

Representations

N/A

Relevant Planning Policies

N/A

Planning Assessment

A check of the original planning permission for the store confirms that there are no conditions which prevent such works from being carried out. Condition 8 of the subsequent permission for works which enabled Next to operate from the store in 2010 also does not include any restrictive condition, other than relating to the sale of food.

The proposed travel agency concession represents only a very minor amount of the existing gross floorspace and will not be a separate shop. It is clear that it would be ancillary to the wider Next store in the same way that a coffee shop would be, or indeed the travel agency which exists at the nearby Tesco store.

Legal advice confirms this view and it is considered that a Certificate may be issued.

Recommendation

ISSUE Certificate for the following reason:

The proposed use of part of the Next store as a travel agency concession, as edged red on drawing number xxxxx 111-020-001 received 21 March 2018, does not constitute development as defined by Section 55 of the Town and

Country Planning Act 1990 (as amended). It would be ancillary to the primary Class A1 retail use of the premises and no material change of use will occur. The proposed use is therefore lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended).

Case Officer: Peter Barnett Date: 4 April 2018

Authorised by: Gary Peck Date: 5 April 2018