expired

Development Control – Delegated Officer Report

Application Number: ADC/0326/09 **Recommendation – Approve**

Site: **6 Seadown Parade, Bowness Avenue, Sompting.**

Proposal: **Change of use from shop (Class A1) to hot food take-away (A5) and associated extraction and ventilation equipment.**

The Application

The application relates to a vacant shop located in the middle of a parade of nine separate premises, located on the north side of Bowness Avenue, 40m to the east of the junction with Western Road.

Permission is sought for a change of use from retail (A1) to hot food take-away (A5), with opening hours of 12:00 – 23:00 Monday to Saturday; and 12:00 – 22:30 Sundays.

The application is made speculatively with there being no tenant having been identified at this stage, consequently the proposed internal layout of the premises show no details of customer service counter or kitchen layout, and the location of the kitchen canopy extractor is only presumed.

Within the parade are a mixture of different retail uses. Unit 1 is occupied by a bakery; Unit 2 JSPC Computer Services; Unit 3 Rogate Paper Supplies; Unit 4 The Art of Crafts; Unit 5 Sompting Mini-Market; Unit 7 Amelia's Hair Salon; Unit 8 B&C Attwater Convenience Store, & Unit 9 Lotus House Chinese Take-Away. The parade of shops sits outside of the Lancing Town Centre boundary with it being approximately 2.45km from the closest part of the defined shopping centre. Other small shopping parades within the surrounding areas are 55 – 59 Test Road, Sompting (0.8km to the NW); and The Parade, Cokeham Road (0.7km directly to the north).

The parade of shops is located within a predominantly residential area, with there being residential maisonettes directly above the premises in the parade, with access from rear terraces; and a mixed character of detached and semi-detached houses and bungalows directly opposite (south), to the east, and further to the north.

The applicant has submitted a supporting statement which covers the change of use. Within the statement they say that the retail unit has been vacant since December 2006, and they provide evidence that a letting/sale agreement has been in place with an Estate Agent since that date, and they have advertised the premises through their mailing list, website and numerous times in the Worthing Herald. Further evidence has been provided that the shop has been advertised on a national property website (EG Property Link), and incorrectly

via the Vale of White Horse District Council website in Oxfordshire. (NB this is evidently the wrong District Council website).

The statement addresses the main consideration being Local Plan Policy AS5, and that due to the lack of success in finding a tenant they feel a change of use would enable a tenant or buyer to be found. It is felt that the vacant shop has resulted in a detrimental impact on the parade of shops and that an A5 use would provide an additional active frontage and attract customers and consequently stimulate more pedestrian activity, in turn increasing the vitality and viability of the parade.

They state that the proposed opening hours are in line with Government Guidance in PPG24, and that they will maximise activities during the daytime whilst minimising noise and disturbance at night. They state that a tenant has been secured for the maisonette above, and that they were not concerned by the proposals when informed, and they consequently signed the lease.

Pope Consulting have designed the relevant ventilation and extraction system which will be required for the unit. As the future occupier is unknown the consultants have based the design of the system on the highest odour concentration levels and grease content identified in the relevant Defra Guidance 'Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems'. To address the physical constraints relating to the maisonettes the extract system has been designed to run through the dwelling above (also in the applicants ownership), and exit through the roof plan via the loft space. Included in the design of the system are 2 pre-filters, active carbon filter, centrifugal fan with low noise 'break out' level which will be fitted with anti-vibration mountings and flexible connections to prevent noise generation. A silencer is also proposed, which would be connected to the outlet of the fan. They state that due to the end occupier being unknown the ventilation/extraction system should be dealt with by an appropriate condition.

The applicant has submitted further information regarding how the specifics of the ductwork will be installed within the maisonette above, stating that noise generated from ducting is generally at the outlet point, and that the duct is continuous through the flat thus reducing internal noise. The system has been designed specifically with a sound attenuator down stream of the fan, and a low air flow velocity which in turn reduces noise generated. The actual ducting is proposed to be packed with acoustic insulation, and it would be similar in construction to a stud wall with two layers of plasterboard on the outer skin and a single layer on the inner skin, again with sound insulation material between.

Consultations and Representations

West Sussex County Council: The Highways Officer states that it is assumed a nil car parking provision is being proposed for this application, as the applicant has not stated that they have any control over the Seadown

Parade parking spaces. The WSCC Parking Standards are maximum standards based on the advice within PPG13. Consequently, as the maximum is not being exceeded no concerns would be raised. Whilst on-street car parking is limited in the immediate vicinity, I would not consider that highway safety would be detrimentally affected through the proposed nil car parking provision. The Planning Authority may wish to consider the potential impacts of this development on on-street car parking. The shop is located within the Built Up area of Sompting where residents would have the choice to walk, cycle or use public transport as an alternative mode of travel to the private car in line with the governments sustainable travel policies.

This application appears to have no significant highway implications; therefore no concerns would be raised.

Adur District Council: The Environmental Health Officer states that although the principle of the guidelines on the control of noise and odour from kitchen extract systems is followed, as shown by the high level discharge, there are concerns regarding the aspects of its installation. He would not agree that the extract fan is particularly low noise (81dB or 65dBA in-duct noise after attenuation) and would also note that noise levels generated within premises can be annoying at far lower levels than those from outside.

Practically speaking, he is unconvinced that vibration and noise from a stack ducted through two areas of living accommodation could be effectively controlled due to the potential for any number of vibration pathways being set up. Once permission had been granted, the only way to control problem noise is through statutory nuisance legislation and retrospective attenuation would be difficult to identify and install. He also raises concerns that maintenance of the stack would be difficult via the loft space. It is requested that any approval be subject to controlling hours of operation with no extract system to operate outside the hours of 0700-2300.

Sompting Parish Council: The Council objects to the application on the grounds that it is important to the area not to lose another retail unit for a take-away. The Council also considers that there is already enough take-away facilities in the area.

Third Parties: There have been three letters of objection to the proposals.

The tenant who occupies the flat directly above the premises has written in to object to the proposals on the grounds that it would be noisy with extracting and ventilation fans, which would have a disturbing effect on health and the restful time after work. The smell will force him to close all his rear side windows which is unbearable, and the back space of the flat would no longer be able to be used for a clothing rack as smelly and greasy vapours will stick to the clothes which would be totally inconvenient.

The owner of No.33 Bowness Avenue states that there are already two late night shops open which cause difficulty with parking and excessive parking on the grass verge. Cooking smells will increase as is the Chinese take-away.

The owner of No.31 Bowness Avenue strongly objects to the use in the evening and would not like more contamination in the air than they are already subjected to from the Chinese Restaurant which they will not want to tolerate. They state that this is a residential area, and already has two hot food take away establishments. Parking is quite often a problem, and the smells from extraction fans will affect all living in the area. They feel that there are plenty of shops available in Lancing town and also plenty of hot food take-away establishments in the local area. They are constantly disturbed by car doors opening and closing, and more evening use of these shops will increase the noise.

Relevant History
S/19/94 – No.4 Seadown Parade. Change of use from shop to hot food take-away (opening times 12 noon to 2.30pm and 5.30pm to 11.30pm every day). Refused 01.09.94 for the reason that: *The proposed use would be likely to result in noise and other disturbance from customers attracted to the premises (particularly in the evening), and in litter and cooking odours, to the detriment of the amenities of nearby residential properties'.*

S/53/96 – No.3 Seadown Parade. Change of use from Shop (Class A1) to Class A3 (Sale of food and drink on premises or hot food for consumption off premises) Refused 18.11.96 for the reason that: *'The proposed use would be likely to result in noise and other disturbance from customers attracted to the premises (particularly in the evening), and in litter and cooking odours, to the detriment of the amenities of nearby residential properties'.*

Relevant Planning Policies and Guidance

Adopted Adur District Local Plan 1993-2006 (ADC 1996): AG1, AS5.
PPS1 Delivering Sustainable Development' (ODPM 2005)
PPG24 'Planning and Noise' (DoE 1994)
Circular 11/95 'The Use of Conditions in Planning Permissions' (DoE 1995)

Planning Assessment

Policies
Local Plan Policies seek to protect and improve the District's built environment, whilst making provision for the needs of those who live and work in the district and improving their quality of life. Policy AG1 states that development will usually be permitted within the built-up area boundary, subject to other policies, and provided it does not detract from the existing local urban environment. Policy AS5 seeks to protect neighbourhood shopping facilities predominantly for the day-to-day shopping needs of residents in the vicinity, and as such in areas subject to this policy the Local

Planning Authority will seek to retain a predominant shopping use, as defined by Use Class A1. It goes on to state that whilst non-retail uses at ground floor level will not normally be permitted, proposals for non-retail uses will be treated on their own merits and will be assessed in relation to the need for the proposed use compared to retail use of the particular premises concerned.

Planning Policy Statement 6 ' Planning for Town Centres' does have regard to local shopping networks, and states that these local centres are essential to provide easily accessible shopping to meet peoples day-to-day needs, with the mix of uses in local centres being carefully managed.

Government Guidance PPG24 entitled 'Planning and Noise' states amongst other things, that where it is not possible to achieve separation of land uses, local planning authorities should consider whether it is practicable to control or reduce noise levels, or to mitigate the impact of noise, through the use of conditions. Much of the development which is necessary for the creation of jobs and the construction and improvement of essential infrastructure will generate noise. The planning system should not place unjustifiable obstacles in the way of such development. Nevertheless, local planning authorities must ensure that development does not cause an unacceptable degree of disturbance. They should also bear in mind that a subsequent intensification or change of use may result in greater intrusion and they may wish to consider the use of appropriate conditions.

Commercial developments such as fast food restaurants, discos, night clubs and public houses pose particular difficulties, not least because associated activities are often at their peak in the evening and late at night. Local planning authorities will wish to bear in mind not only the noise that is generated within the premises but also the attendant problems of noise that may be made by customers in the vicinity. The disturbance that can be caused by traffic and associated car parking should not be underestimated. (Annex 3 para 20). Examples of conditions are given which a) set a noise limit over a given period at a specified point - such as outside the nearest noise-sensitive building or at the site boundary, and b) specify the type of activity that may take place, any restrictions necessary on the hours of operation, and details of the construction and layout of the development (annex 4).

Viability of the retail parade

The emphasis of policy AS5 is aimed at the protection of local shopping facilities, with more recently published Government Guidance reinforcing the view, that local neighbourhood shopping centres are essential to provide easily accessible shopping to meet people's day-to-day needs.

The parade of shops has no other vacant units within it and most of the uses appear well established. Evidence has been supplied by the applicant that the premises have been vacant since 2006, with regular adverts having been placed in the local newspaper, and on property websites still not attracting tenants or prospective buyers.

Other small parades of neighbourhood shops within the vicinity have a similar number of units within them, 55-59 Test Road has 5 units (although the Co-operative Supermarket occupies 4) with one being occupied by an A5 use (Sompting Fish Bar), whereas The Parade in Cokeham Road is made up of 8 units with there being a greater mix of businesses, and only one being an A5 use (Asian Spice). Closer to the Town centre of Lancing there is a higher proportion of A5 uses within parades of shops, as in the case of Crabtree Lane where out of 20 shops there are six A5 uses, of a variety of different food types.

A recent Appeal decision (ADC/0562/08) in Southwick Square tested the policy basis of the retention of predominantly shopping uses (AS1), where a proposed A1 retail unit looked to change to an A2 bookmakers where there was another within the vicinity. The inspector concluded that '*Although the shopping centre was healthy, there was a need to retain the character and vitality of shopping centres, including continuity and, in this case, the concentration of retail units in prominent, central positions.* Also that *'The loss of existing shopping provision would detract from the centre's vitality and viability and the proposed use is unlikely to attract additional people to the area to compensate for this.'* It was also stated that *'...a betting office already exists in the centre and in this case I consider the need to protect existing facilities providing for the day to day needs of those in the area is of overriding importance'.*

Whilst the importance of a mix of local shops cannot be underestimated, it does appear that market forces are working against the application site and it is evident that it has been vacant for more than 2 years.

The parade itself has a number of units which are all open during normal trading hours, i.e. from morning 6am – 9am until afternoon 2.30pm – 6pm, (No. 5 the Sompting Mini-Market is open until 11pm), whilst the other existing A5 use at No. 9 (Lotus House) is open from noon until 11 pm. It is considered that the parade is relatively lively with the majority of shops being open during the day. Currently the application site is vacant and clearly it has a detrimental effect on the character and vibrancy of the parade as a whole. If permission were to be granted it is not considered that two shops being closed up until 12 noon would result in a detrimental effect on the character of the parade as a whole.

The Inspectors argument regarding the loss of the retail use detracting from the viability of the centre because the addition of a similar use (betting shop) was unlikely to attract additional people to compensate for the loss, is not considered to be relevant in this instance. The examples of two betting shops which offer very similar services, and two separate A5 uses which are very likely to offer different styles of cuisine are not considered to be similar, and given the unit has been vacant for such a long time, it is considered that more people would be attracted to the parade of shops with the additional A5 use than at the present time. Consequently it is not considered that the loss of the vacant shopping provision would detract from the vitality of the parade.

Residential amenity- noise and smells
The use of the premises for a hot food take-away gives rise to a number of environmental concerns. These are the potential adverse effects on the residential amenities of the locality which is predominantly residential, with maisonettes above the shops, and houses directly opposite. Noise or other disturbance arising from customers and traffic generated, plus cooking smell are the main potential problems.

The applicants consultants have designed the proposed ducting and extract system on the basis of the worst possible case scenario in terms of levels of odour concentration and grease content, i.e. a fish and chip shop, fast food/ burger take-away or fried chicken take-away, however that is not to say that the eventual occupant would not be a less problematic food type to deal with. The Environmental Health Officer states that in principle the Defra Guidelines have been followed, as shown by the high level discharge, and his concerns relate to the noise of the external fan at ground floor level, and the installation of the ducting through the dwelling above, and whether this can practicably be dealt with through insulation.

It is considered that as the extraction and ducting design as submitted would be adept at dealing with the highest odour concentration levels, and that due to there being no fixed occupant for the premises, that a specific condition covering the design and implementation of an approved extraction system would ensure that there would be no loss of amenity to surrounding residential dwellings due to fan and extraction noise and/or odour from the premises.

Residential amenity- Disturbance
Take-aways often cause more disturbance than typical shops or restaurants because they are open late into the evening when the comings and goings of customers (with noise from vehicles) can be more obtrusive above lower background noise at such times. In this instance the applicant has indicated the proposed hours of operation (12:00 – 23:00 Monday to Saturday; and 12:00 – 22:30 Sundays) which are the same as the existing A5 use at No.9. It is felt that imposing a more restrictive set of opening hours in comparison to the permitted times of No.9 would be considered unreasonable, and if they were too early this might affect the eventual viability of the business in the long term. As the final tenant has not been identified it is considered that, if permission were to be granted, an additional condition restricting the use to take-away only, rather than allowing any sort of delivery service would also lessen the noise associated with comings and goings of vehicles and people.

Residential amenity - Maisonette above
It would appear that the greatest source of conflict would be between the maisonette located directly above the A5 use. The proposals show an unusual design with the ductwork passing through the front living room at first floor and bedroom at second floor of the maisonette. The tenant of the maisonette has recently moved in, and has objected to the proposals. They raise concerns

that the noise associated with the extraction and ventilation will be unacceptable, whilst other concerns regarding smell and vapours have been addressed above.

It is considered that there may be some conflict between tenant and landlord regarding access to the property for the needs of cleaning and maintenance, however this would be covered by other property legislation. With regards to the frequency that access would be required for the purposes of cleaning and maintenance, the consultants have confirmed that if the extraction system was to be used moderately (i.e. 6 – 12 hours per day as proposed) the frequency of servicing would be every 6 months. It is not considered that this frequency would be so regular as to warrant refusal solely on this basis, particularly if the tenant was made aware through there tenancy agreement with the landlord.

Any complaints regarding the noise emitted from unmaintained equipment would generally be covered by other legislation could be used such as Part III of the Environmental Protection Act 1990 as amended by the Noise and Statutory Nuisance Act 1993, which requires local authorities to serve abatement notices where the noise emitted from any premises, or from vehicles, machinery and equipment in the street, which constitutes a statutory nuisance.

With regards to the potential for noise within the maisonette from expelled air within the ducting. Depite the concerns raised from the Environmental Health Officer, it is considered that ducting that is designed with suitable acoustic dampening could prevent and disturbance being caused to the occupier of the maisonette, and consequently can be dealt with by an appropriate planning condition.

Visual amenity

Traditional steel box ducting can have an ugly appearance and be detrimental to the appearance of a mixed retail and residential area, and it is important to retain the balance in appearance between commercial premises and residential dwellings. In the instance of No.9 Seadown parade a square duct and extract system leaves the terrace from the east side wall and returns to the rear of the building. In many case there is a deterioration in appearance of the ductwork, and it is usual for them to be mounted to the rear of the building within what is traditionally a services area.
In the example of Seadown Parade all access to the maisonettes above the shops is via a first floor terrace to the rear. A common walkway at the rear is shared by all of the occupiers, and it is likely that due to the shared ownership that it would not be possible to attach the ducting in the normal way to the rear elevation.

With regards to the visual impact, there would be a small amount of duct that would be visible at roof height, and as amended it would now be located to the rear of the main roof ridge, and project 1m above. The ducting would be powder coated to a finish that could be controlled by condition, and it is considered that the affect on the appearance of the parade from ground level

would be minimal. The overall design and final height of the ducting would be secured by condition, in response to the technical specifications of the final tenant.

The main bulk of the extraction system would be a first floor level on the rear of the building, adjacent to the rear exits of the adjacent commercial premises. The rear yards are all different in appearance with ancillary storage, refuse bins, car parking and some extensions. It is not considered that the extraction system would be particularly out of keeping given the overall appearance of the service area.

Access and Parking

There have been no Highways objection to the proposals. The parade is serviced by a lay-by which enables cars to park nose-on, and is wide enough to accommodate 18 – 20 cars. Whilst the road immediately in front of the parade is relatively narrow the surrounding roads have unrestricted parking. It is considered that when the A5 uses within the parade would be at their busiest that most of the other shops would be closed, and as a result the demand on the lay-by parking would be reduced. The surrounding houses and bungalows all have off-street parking so it is unlikely that much demand would be placed on the lay-by by the occupiers of these dwellings.

Recommendation

APPROVE for the reason that: -

The A5 use hereby aproved, would improve the vitality and viability of the neighbourhood shopping parade without detraction from highway safety and, subject to the provision of a filtered and soundproofed extract ventilation system, and the limitation of hours of opening, would not detract to an unacceptable degree from the residential amenities of No.6A Seadown Parade or from the other dwellings in the vicinity. It would thereby not conflict with the relevant policies of the Adur District Local Plan (AG1, AS5)

Subject to:-

1. C1Ci (Standard Time Limit)
2. C14L (Business hours and external illumination limited to 12:00 – 23:00 Monday to Saturday; and 12:00 – 22:30 Sundays with all activity ceasing at these times, and no home delivery service being offered) amended
3. C14O – amended
   The use hereby permitted shall not be commenced until a satisfactory means of ventilation for the extraction, filtration, sound attenuation, disposal of cooking odours, and colour of ducting (including detailed design of sound attenuation measures and internal ductwork through No.6A Seadown Parade) has been provided for the specific type of A5 use in accordance with details to

be submitted to and approved in writing by the Local Planning Authority, and the system as approved shall thereafter be retained in effective working order and operated at all times when cooking is taking place. Should the specific type of A5 restaurant change, further details of extraction, filtration and disposal of cooking odours will be required.
Reason: *In the interests of amenity and to comply with policy AG1 of the ADLP.*

4. C14Aii
This permission relates to the application as amended by the revised plan received on 14.10.09.
Reason: *(AG1 of the ADLP)*

Case Officer: [redacted]
Date: 26.10.09.

Planning Services Manager: [redacted]
Date: 26/10/09

Development Control Committee Chairm[redacted]
Date: 02/11/09.