**Development Control – Delegated Officer Report**

**Application Number: ADC/0003/11** **Recommendation – Temporary Permission**

**Site:** **132 Beach Green, Shoreham-by-Sea BN43 5YA**

**Proposal:** **Continued use as a hot food take-away and cafe (renewal of ADC/0408/09) and variation of condition 2 of ADC/0408/09 to enable opening at 7.30am (instead of 8.00am)**

## The Application

This application is for renewal of the temporary permission ADC/0408/09 granted on 7 January 2010, expiring 31 January 2011. That permission was granted by Committee after a previous refusal for use as a cafe in 2008 (ADC/0344/08) on grounds of lack of provision for odour extraction.

The premises lie within a short parade of shops/commercial units on the ground floor of two attached three-storey blocks of flats comprising Princes Court. The double unit which is the subject of the application was previously a newsagents with Post Office. To the east is the entrance door/stairs to the flats above, with 2 other units beyond (a pet-grooming shop and a sign/printing shop). To the west are 2 further shop units (a hairdressers and Beach Green Stores) located in the attached building which is set much further back from the road. To the rear (north) are garage blocks.

The present application is to renew the change the use from a shop (A1) to a hot food take-away (A5) with café (A3). The use consists of cold take-away foods (such as sandwiches and fruit) and hot takeaway food comprising beefburgers, hot dogs and pizzas, plus tea, coffee and ice cream. The cooking is by means of a ventless fryer and a ventless microwave/convection oven which do not require any external extraction. The rear windows are stated to be openable, as required by H & S guidelines, to enable air into the kitchen area.

At the time of the previous application, the operator of the business stated:-

> "To clarify my previous statements, regeneration of precooked foods would be done in the air convection oven, this primarily covers all the foods normally deep fried ie. we air fry the foods using only the oil factor on the product, thereby reducing the oil content by about 40% creating a healthier end product for the customer, these items would be purchased from a foodservice wholesaler such as ..... fully cooked or oven ready. The Turbo Chef is a "Speed cooking oven" capable of cooking raw meats & proteins, raw dough products, frozen potato products, pizza, cookies & muffins etc. This unit would be used primarily for our burgers and pizzas, yes we do make our own burgers on site, using meats and other ingredients ..... this way I know whats in them, I can assure you there are no "nasties" a very healthy product, I may say. We have been to the Turbo chef distributors test kitchen with our burgers & pizzas and were well pleased with the results, this was over a year ago before I started this current project. I would not have proceeded if I had doubts about the quality of the finished products that we intended to offer the customer, or the capability of the equipment....."

**Consultations and Representations**

***West Sussex County Council:*** Previously raised no objection, commenting that the proposal is unlikely to lead to an increase in vehicle movements to the point where a highway safety issue would arise.

***Adur District Council:*** The Environmental Health Officer states that he has no objection to the earlier opening time or to the continued use provided the single ventless fryer and a single ventless microwave/convection oven were installed as previously permitted. Previously expressed concern about the proposed ventless fryer and a ventless microwave/ convection oven as there was little or no information available on odour impacts apart from the manufacturer's sales literature and it did not accord with the only official guidance available, namely the Control of Odour and Noise from Commercial Kitchen Exhausts Systems produced by DEFRA. This indicates that for the type of food the applicant proposes, a high level of odour control is needed and an odour extract discharge should be provided above roof level (unless an exceptionally high level of odour control were incorporated but this would be very expensive). Without such provision, there may be potential odour nuisance to neighbouring residents. In addition, general advice on kitchen hygiene and health & safety is that the kitchen needs to have some form of ventilation whether by vents or openable windows to provide a degree of temperature control for workers and food. The applicant only states an intention to cook or reheat certain types of food and only using the proposed ventless fryer and oven but this would be difficult to control through planning conditions and may change over time. There is also concern about setting a precedent if no extract system is provided. Customer noise requires appropriate limitation of opening hours.

***Third Parties***: 3 letters/emails have been received. These are from the resident of flat No.29 Kings Court; the neighbouring shopkeeper (No.134); and from the Shoreham Beach Residents Association.

The resident of Flat No.29 feels there is no justification for earlier opening with increased noise from slamming of car doors and asks for the fact that it is a highly residential area (with many elderly people nearby) to be taken into account. Also, there is a problem exiting their car park because of obstruction of visibility by cars and lorries parked on the footway.

Beach Green Stores (No.134) hope permission will be renewed and the hours extended as, despite previous misgivings, they have had no problems with litter, noise or anti-social behaviour.

The email on behalf of the Shoreham Beach Residents Association considers the earlier opening time should be refused because cooking would need to commence before 7.30am causing disturbance to this residential area with a high proportion of older residents. Previous concerns about lack of suitable parking does not seem to have been a problem in practice but could become so if the operator of type of food changes – therefore asks for a personal permission to the applicant only

**Relevant Planning Policies and Guidance**

Adopted Adur District Local Plan 1993-2006 (ADC 1996) (saved policies): AG1, AS5
PPS1 'Delivering Sustainable Development' (ODPM 2005)

PPG24 ‘Planning and Noise’ (DoE 1994)
‘Guidance on the Control of Odour & Noise from Commercial Kitchen Exhaust Systems’ (DEFRA Jan 2005)

**Planning Assessment**

***Policies***

The site is located within a small neighbourhood shopping parade serving the west part of Shoreham Beach. Policy AS5 of the Local Plan states that permission will not normally be granted for changes to non-retail use at ground floor level; proposals for non-retail uses will be treated on their merits and will be assessed in relation to the need for the proposed use compared to retail use of the particular premises concerned.

PPG24 states that food & drink uses, particularly fast food restaurants, public houses and night clubs, pose particular difficulties because their activities peak in the evening and late at night. It advises LPAs to consider the noise that may be made by customers in the vicinity and states that the disturbance from traffic and car parking should not be underestimated.

***Principle of Development***

Although not an A1 use, the use as a takeaway with cafe is a type of retail service and is acceptable in principle. There are other A1 uses within this parade of shops and the takeaway/cafe helps to maintain the viability of the parade.

The other main concerns are the effects on the residential amenities of the locality especially the flats directly above from cooking smells and noise disturbance, and on highway safety.

***Residential Amenity - noise***

As regards noise from customers and activity, the main concern is in the evening period when background noise levels are lower. Disturbance from a takeaway is normally considerably greater than with a restaurant owing to the greater frequency of customers arriving and departing. However, the impact on nearby residential properties can be kept to an acceptable level if the opening hours are restricted to prevent early morning and late evening opening when background noise levels are much lower. The requirement to open at no earlier than 8am and to close to customers at 10pm was considered justified and as it had been accepted at other neighbourhood parades with flats above. In practice, it does not appear to have caused any problems.

It is considered that the applicant’s proposed earlier opening at 7.30am has the potential to cause disturbance to residents above, especially if food is prepared or cooked prior to that time in order to be ready. It is considered that a further temporary permission should be given to provide a trial period.

***Residential Amenity - odour***

It was evident at the time of the previous application that the issue of cooking odour wa a difficult one to resolve in this particular case and was an important issue because of the residential flats in this block which are in very close proximity.

The applicant proposed cooking of beefburgers and hot dogs by means of a ventless fryer with a ventless microwave/convection oven used for regenerating pre-cooked foods. He pointed out that these do not require any external extraction, utilising an American self-contained greaseless frying system and a convection oven designed to use air to heat pre-cooked food.

The Environmental Health officer had concerns as indicated above and, given the difficulty of being unable to disprove the efficacy of the proposed ventless fryer and ventless microwave/convection oven, it was considered appropriate to grant a temporary permission to provide a trial period. In the event, it appears to have been satisfactory, with no complaints received about odour.

***Access and parking***

Local residents previously expressed concerns that the use would attract more traffic to a location where there is already insufficient parking, aggravating existing problem of parking on pavements and obstructing accesses, and increase the chances of accidents on a corner where drivers travel too fast. However, it was not considered that the use would generate more traffic than the previous use as a newsagents/post office and WSCC, as the local highway authority, had no objection. During the trial period of the use, there is no evidence to indicate that the proposal has generated significantly more traffic or highway safety problems than the lawful use as a shop.

**Recommendation**

APPROVE for the reason:-

The proposal would not harm the vitality and viability of this neighbourhood shopping parade but, because of the earlier opening time has the potential to cause disturbance that would adversely affect the residential amenities of nearby flats, it is necessary only to grant a temporary permission to provide a trial period and retain planning control, having regard to the relevant policies of the Adur District Local Plan (AG1, AS5).

Subject to:-

1. C1Dii ....to their former condition unless otherwise approved in writing by the LPA on or before the expiration of the period ending on 29 February 2012*. R. To retain control over a use which has the potential by reason of the earlier opening time to detract from the residential*

*amenities of the locality, having regard to policies AG1 and AS5 of the ADLP.*

2. C14L .....hours of 7.30am and 10pm .....All activity shall cease at the premises by 10.30pm.
3. Cooking, regeneration and re-heating of food shall be solely by means of a single ventless fryer and a single ventless microwave/convection oven and by no other means without the prior written approval of the LPA. *R. as 03 of ADC/0408/09*
4. No air extraction or air conditioning shall be installed at the premises unless in accordance with details which have first been submitted to and approved in writing by the LPA. *R. as 04 of ADC/0408/09*

Case Officer: Keith Morgan Date: 21 February 2011