Exp 16/6

Development Control – Delegated Officer Report

Application Number: ADC/0029/09 Recommendation – APPROVE

Site: **112 and 114 High Street, Shoreham-by-Sea BN43 5DB**

Proposal: **Revised extract system at rear of No.112 and continued opening of No.114 until 11.30pm with all activity ceasing by 12 midnight (renewal of SU/179/04) (retrospective)**

The Application

The application premises are 2 former shops in a block of 4 on the east side of the A283, to the north of the Conservative Club. They comprise restaurant/takeaways on the ground floor with flats above. 'The Curry Place' at No.112 expanded to incorporate No.114 in 2006 but has recently been separated, with No.114 currently empty (but with a sign referring to re-opening as 'Yasmin').

In respect of No.112, change of use from a shop to a takeaway was approved in 1978 (SU/369/78) and the condition restricting opening hours was subsequently varied to enable opening until 11.30pm (SU/244/80). In 2005, a rear extension and external stairs were added, the permission also including a rear extract duct (SU/97/05), In 2006, permission (ADC/0173/06) was granted to further extend the existing groundfloor rear extension, re-positioning the external rear access stairs to the first floor & relocating a shed in rear yard, and adding a new extract duct and system. However, this extension has not been implemented and the extract system/ducts installed are larger than that permitted. The present application seeks retrospective permission.

The previous application ADC/0173/06 had been required to be amended by the Committee (after EHO advice) to include details of the proposed extraction system. The approved details comprised ducting up to 0.6m wide running along the flat roof of the single-storey rear extension and up the rear gable wall of the two-storey rear wing (to an overall height of 6.5m) and involved the latest technology with an ultra violet unit producing ozone and hydroxyl radicals which oxidise the organic odour and grease molecules in the extracted air.

In respect of No.114, permission was granted for the change of use from a vacant shop to a restaurant/takeaway in 2004 (SU/30/04). Later in 2004, temporary permission was granted to vary condition 2 to enable opening until 11.30pm (instead of 11pm). The present application is to renew that permission for later opening.

Consultations and Representations

Adur District Council: The Environmental Health Officer has no objection, stating that odour and noise abatement (with UV filter and anti-vibration mountings) have been incorporated into the implemented design (NB.

previously commented that this UV technology is relatively new and is not addressed in the DEFRA guidance but the company is confident that the odour and grease reduction is at least equivalent to a very high level of odour control). States that they have not received any complaints and that the objectors to this planning application should be advised to report their issues with odour direct to EHOs for investigation as to whether action can be taken for statutory nuisance should the system not be working effectively.

Third Parties: 3 letters/email have been received from residents of the houses to the rear at No's 13, 15 & 17 West Street.
No.13 objects on grounds of visual impact; the system installed is unsightly and dominates the rear of the building and no provision made to soften its impact. At the very least it should be coated to avoid the starkness of bare metal.
No.15 objects, stating it is unacceptable in a conservation area and there is concern with smells, noise until 12 midnight and overdevelopment.
No.17 states the cooking smell is still very strong and permeates the house.

Relevant Planning Policies and Guidance

Adopted Adur District Local Plan 1993-2006 (ADC1996) (saved policies):
AG1, AS1
PPS1: 'Delivering Sustainable Development' (ODPM 2005)
PPS6: 'Planning for Town Centres' (ODPM 2005)
PPG24 'Planning and Noise' (DoE 1994)

Planning Assessment

Policies

The application site lies within the area identified for shopping purposes in the town centre and is specifically subject to policy AS1 which allows for changes of use to restaurants and takeaways, as well as shops, provided there is no harm to the amenity of nearby residents.

The site lies just outside the Conservation Area (but not within it) so, although the effect on the Conservation Area is a material consideration, the statutory duty to pay regard to the desirability of preserving or enhancing its character or appearance does not apply, nor the policies relating to it.

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.
PPS6 states that planning policies need to manage the evening and late-night economy in appropriate centres, encouraging a range of complementary uses for a wide range of age and social groups. Councils should consider the scale and impact on the character of the centre, anti-social behaviour, crime, and the amenities of residents. They should ensure an integrated approach taking

account of their Statement of Licensing policy and the promotion of licensing objectives and consider developing a local strategy. The Government's objectives for the Licensing Act 2003 are flexibility to avoid concentrations of customers leaving premises at fixed and artificially early closing times and this is reflected in this Council's Licensing policy statement which seeks slower dispersal of people through a variety of closing times.

Appearance

The extract system/ducting is very large, comprising 2 vertical ducts (one of which is to full chimney height), and, for this reason plus its bright metal finish, causes greater visual detraction than the smaller system previously permitted in 2007. The ducting would stand out less were its external surfaces to be painted to match the colour of the wall. This was a requirement of the permission granted in 2007.

It is mainly seen from the private car park at the rear of the Conservative Club and to a lesser extent, because of intervening trees and vegetation, from the rear of houses in West Street (which are within the Conservation Area). It cannot be seen from the street or from any public viewpoint.

The need for effective odour reduction is a prime consideration and is considered of such importance, on balance, as to outweigh the visual harm, subject to satisfactory painting.

Residential amenity – Odour

An extraction system had previously been approved under SU/97/05, which was adequate for a larger kitchen but had never been installed. Due to concerns that the previously approved system had never been installed and odour nuisance complaints having been received, the EHO considered it necessary to secure full details of the proposed extraction unit prior to any approval of the previous application in 2007. It took several months of negotiation between officers, the applicant, the applicant's agent and personnel from the suppliers of the proposed extraction system to get the required details.

The EHO considers the present system, which is to the latest technology, to be acceptable and hence refusal of planning permission would be very difficult to substantiate. He also mentions that proper maintenance is important and states that it they were to receive any formal complaints they would instigate an investigation as to whether action can be taken for statutory nuisance should the system not be working effectively.

Residential amenity – customer noise

The temporary permission for extended hours till 11.30pm at No.114 was to retain control owing to concerns about customer noise causing sleep disturbance to local residents. The original opening hours at No.114 were restricted to 11pm. This was in accordance with ADC's supplementary

planning guidance "Late Night Opening of Restaurants and Take-aways" which was adopted as long ago as 1985. However, this guidance now has very little weight because of more recent Government policy in PPS6 (2005). Taking account of the new licensing regime objectives, PPS6 encourages more flexibility and generally less restriction of opening times to increase choice and avoid concentrations of people leaving licensed premises at particular times.

No.112 enjoys permanent permission to stay open until 11.30pm. No complaints have been received about nuisance as a result of opening till this time at either No.112 or 114. Although there is permission for flats to be built opposite (the last phase at Ropetackle), these would not be on the groundfloor level and, given the busy road in between, it is considered that 11.30pm is acceptable for No.114 in addition to No.112.

Recommendation

APPROVE for reason that:-

Whilst the size of the extract system causes detraction from the visual amenities of the immediate vicinity, it is brought about by the filtration and odour treatment requirements needed to prevent unacceptable odour affecting nearby residential properties. Having regard to the position at the rear of the buildings, concealed from general public view including from within the adjacent Conservation Area, it is considered that the extract system is acceptable subject to its external painting. Opening until 11.30pm at No.114 brings the opening times into line with those of No.112 and does not result in unacceptable detriment to the amenities of nearby properties. In consequence the application does not conflict with the relevant policies of the Adur District Local Plan (AG1, AS1).

Subject to:-

1. Within 2 months of the date of this permission, the external surfaces of the extract system (including the ducting) shall be painted in accordance with details to be submitted to and approved in writing by the LPA.
2. C14L (.....hours of 8.30am and 11.30pm.....all activity at the premises shall cease by 12 midnight) (amended)
3. The means of ventilation for the extraction, filtration and disposal of cooking odours shall be retained in effective working order and maintained in accordance with the manufacturer's specifications and operated at all times when cooking is taking place.

Case Officer... [redacted] Date..21/5/09.....

Chairman of Development Control Committee [redacted] ate..22/05/09..