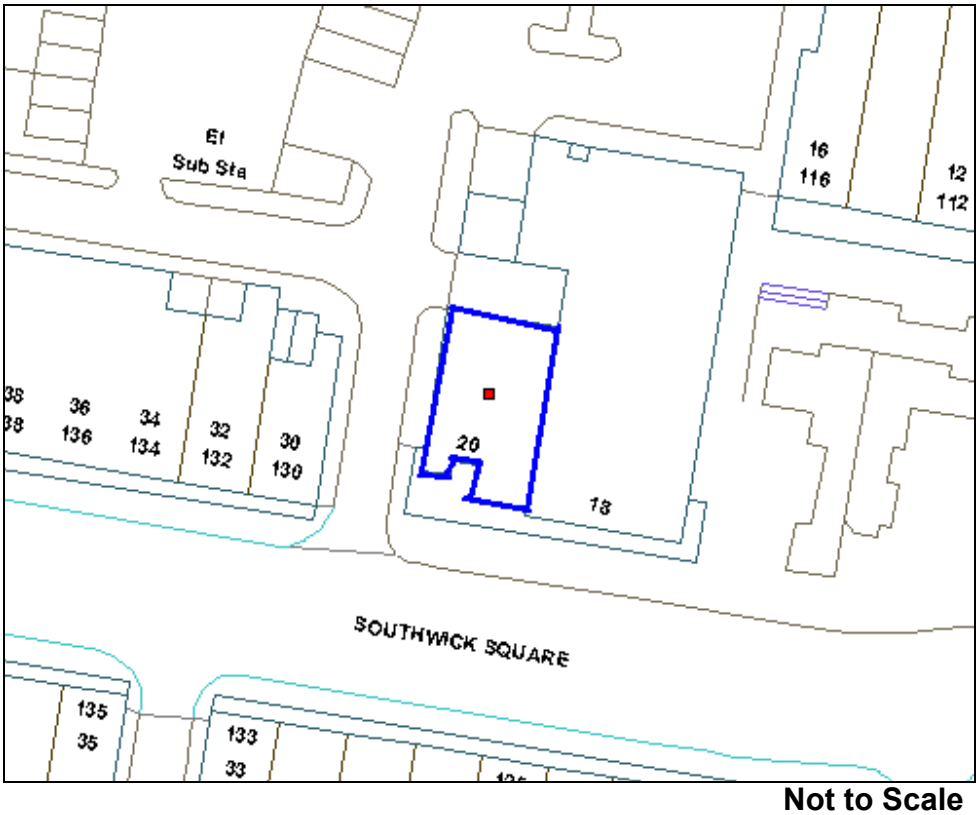
Application Number: AWDM/ **Recommendation – REFUSE**

Site: **First Floor, 20 Southwick Square, Southwick, Brighton West Sussex, BN42 4FJ**

Proposal: **Change of use from restaurant (class A3) to a mixed use under Classes A3 (Restaurant and Cafe), A4 (Drinking Establishment) and A5 (Hot Food Takeaway). Extension of opening hours to 8am - 11pm Monday-Thursday, 8am - 11.30pm Friday-Saturday and 9.30am - 9pm Sundays and Bank Holidays.**

Applicant: Miss Dayna Barlow Ward: Southwick Green
Case Officer: Peter Barnett



Not to Scale

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Proposal, Site and Surroundings

The application relates to the first floor premises known as 'Café Cube' above a ground floor shop on the north side of Southwick Square. The building is two storeys in height

and is adjacent to an oriental food store with storage above. There is no residential accommodation in this particular building although there are flats above the shops to the west and on the opposite side of the Square to the south. An access road leading to a public car park and garage block runs immediately to the west, separating the building from the shops and flats beyond.

The application is seeking to extend the opening hours at Café Cube from 8.45am to 10.30pm Monday to Saturday to 8am-11pm Monday to Thursday, 8am-11.30pm Friday-Saturday, and 9.30am-9pm Sundays and Bank Holidays.

The application also wishes to change the permitted use of the premises as a restaurant with no takeaway (Class A3) to a mixed use of restaurant, drinking establishment (A4) and takeaway (A5).

Relevant Planning History

SW/59/85 – Change of use of first floor from storage ancillary to shop to include use as coffee bar –approved by Notice dated 16/09/85

SW/51/91 – Amendment of Conditions 2 and 3 of SW/59/85 to permit use of first floor as restaurant (opening hours 8.45am-10.30pm) and enclosed staircase at rear – Temporary permission granted by Notice dated 8/10/91

SW/29/92 – Continued use of first floor as restaurant – approved 15/6/92 subject to following conditions:

1. The premises shall not be open for trade or business on Sundays or Public Holidays nor at any other time except between the hours of 8.45am and 10.30pm, and there shall be no external illumination on the premises outside these specified hours
2. The premises shall not be used for the sale of food and drink for consumption off the premises

AWDM/0672/12 - Application to vary condition 1 of planning permission SW/29/92/TP to vary the hours the premises can be open for trade or business from 8.45 am and 10.30 pm to:- Monday to Thursday from 6.30 am to 11.00 pm, Friday from 6.30 am to 12.30 am, Saturday from 8.00am to 12.30 am and Sunday from 8.00 am to 11.00 pm - refused by Notice dated 12 July 2012 for the following reason:

The proposed extension of the opening hours will result in harm to the amenities of neighbouring residents through increased noise and disturbance at unsocial hours, thereby conflicting with policies AG1 and AS1 of the Adur District Local Plan and the National Planning Policy Framework.

Consultations

West Sussex County Council: No objection from a transport/highways aspect. Comments that the site is located within a small array of commercial and retail business sites and is surrounded by residential properties. As a result it is likely that some customers to the takeaway part of the proposal will be able to walk to the site to place and collect orders. Whilst we are aware that this proposal would result in a takeaway facility with no specific parking provision, based on our observations regarding car parking in the immediate locality and the current use of the site as a restaurant which would have attracted passing trade throughout the day, they do not consider that a takeaway operating mainly during the evening period would materially worsen traffic conditions.

Adur & Worthing Councils: The ***Environmental Health*** officer objects and requests that permission for A4 use is refused. A4 use during the hours requested is inconsistent with other business in the square and would be detrimental to the amenity of the neighbouring residents. There are residents to the West and South of the premises that are likely to be affected by noise from customers smoking and from entering and leaving the premises late at night. The Square forms a canyon and loud voices would reverberate around the area at night, when most of the other business is closed.

The café occupies an area that was once a store room for the shoe shop that existed below. There are single glazed windows on the South and West facades of the café which are opened for ventilation and thermal comfort during the hot summer months, there is no air conditioning in the premises. Access to the premises is up external concrete steps, not ideal if customers have been drinking. This is not a purpose built development that can be designed to mitigate noise from these sources.

He has no objections to the premises being open on Sundays and Bank Holidays for A3 and A5 use. However, he has requested the following hours:- 8am to 11pm Monday to Saturday, with all food orders ending at 10pm to ensure the premises is vacated by 11pm. 8am to 9pm Sundays and Bank Holidays, with all food orders ending at 8pm to ensure the premises is vacated by 9pm. These hours would be more a kin to the other restaurant in the square and would be in keeping for the locality. The following condition should also be placed on any new permission:-

"The bar shall only be open to customers seated having a meal or customers waiting to be seated for a meal".

Representations

3 letters/emails have been received from residents of No's *125, 129, 131 Southwick Square* objecting on the following grounds:-

- Fish and chip shop in Southwick Square opens between 11am and 9pm Monday-Saturday and has extractor fans to remove unpleasant smells. Even with those restrictions there are still problems with noise and disturbance.
- Loss of privacy to flats directly opposite
- Café now has pull-down blinds
- Increased noise from loud, drunken people leaving at 2am and from taxis and slamming doors
- Premises already operates outside of these hours and often closes at 2am and serves food on Sundays with blatant A-board sign advertising the fact
- Photos and evidence has been submitted to the Council of the unlawful activities
- Already been refused permission. They should be made to keep to existing lawful hours.
- Premises already used as a drinking establishment
- Owners have complete disregard for planning controls

Relevant Planning Policies and Guidance

Adopted Adur District Local Plan 1993-2006 (ADC 1996) (saved policies): AG1, AS1
National Planning Policy Framework (CLG 2012)

Planning Assessment

Principle

Policy AS1 of the ADLP supports development for shopping and food and drink purposes within shopping areas such as this, subject to several criteria, including that there is no loss of amenity to nearby residents. The premises have an A3 restaurant use with restrictions on the opening hours and the main issue is the impact that the proposed change of use and extended hours would have on residential amenity, particularly as it would appear that the premises are already operating outside of the lawful use/hours.

Visual amenity

No change to the outside of the premises is proposed.

Residential amenity

The main issue is the impact on amenity which would arise from a change of use and extension of hours.

The lawful use of the premises is as a restaurant (Class A3), which is appropriate and accords with policy AS1. However, the premises (which is accessed via stairs at the rear) is being used as a café, bar, restaurant and takeaway which extends the use of the premises into Classes A4 (drinking establishments) and A5 (hot food takeaways). This application is therefore seeking to regularise this mixed use.

Given the proximity of residential properties to the premises there is a concern that a bar use in this location is inappropriate. While there is no flat immediately adjacent to the premises, there are flats to the south and west. A restaurant use alone would not be expected to result in undue disturbance to residential amenity; however, representations received before and during the course of the application suggest that the use is more akin to a bar in the evenings with noisy drinkers causing considerable disturbance. The impact is made worse by the lack of sound insulation at the premises (as a result of it being originally only used as an ancillary storage area). With windows open, voices can be heard across the street. Patrons leaving the premises after midnight also cause disturbance. The flats on the opposite side are about 20m away and sound can reverberate, particularly at night when it is quiet, which exacerbates the noise impact.

The applicants have stated that they have sought to reduce the impact on neighbours by ensuring that windows at the front are closed and blinds drawn about 9pm each evening. Windows remain open on the west side of the building and there are several large fans in use to ensure some ventilation. They also expressed a willingness reduce the extent of the opening hours sought to 11pm Monday-Saturday. This is similar to the opening hours of The Cricketers Pub on The Green, at the western end of Southwick Square, and is more reasonable than the 2am closure alleged by complainants previously.

However, while the measures taken by the applicants are acknowledged and welcomed, there is considered to be a fundamental objection to the use of the premises as a drinking establishment due to its first floor location and position within the Square. It is not a purpose-built pub, such as The Cricketers, and is centrally located within the Square rather than facing The Green in a relatively more open location. Noise from the use and from people leaving the premises will have greater impact due to the relatively close proximity of the buildings opposite and the resulting noise reverberation. An A4 use in this location is not considered to be desirable and could set a precedent for further such uses to the detriment of the character of the area.

A takeaway use also has the potential to be unneighbourly. However, it would appears be an ancillary use linked to the restaurant and would be unlikely to have a high turnover of takeaway customers such as a fish and chip shop. On the basis that any takeaway use remains limited and only an ancillary use to the restaurant, it would be unlikely to cause nuisance to neighbours and not need planning permission. If permission was required conditions could be imposed to limit opening hours.

The application seeks a 30 minute increase on Monday to Saturday nights. In the mornings, the premises are to be open 45 minutes earlier on Monday to Saturdays. The proposed Sunday opening hours are within the permitted hours. The current lease at the premises (issued by the Council as landlord) allows 8.45am to 11.30pm Monday to Saturday and 8.45am to 10.30pm on Sundays. A new lease would not therefore be required if planning permission were granted for the hours sought.

The licence issued to the premises allows it to sell alcohol up to midnight every day but this is separate from planning permission and does not override it.

While there are other restaurants in the Square, these close at 11pm at the latest. Indications are that Café Cube was regularly open until late at night. The hours currently sought are more reasonable and, for a restaurant use only (with ancillary A3 use), are not considered to be harmful. However, the application is also proposing a drinking establishment use which is likely to lead to harm to residential amenity through increased noise and disturbance at unsocial hours and for this reason the whole application must be refused. Given the level of harm being caused it would be appropriate to take enforcement action to cease the use and this would be pursued as a delegated matter if Members resolve to refuse this application.

Accessibility and parking

The application does not alter parking and access at the property.

Recommendation

REFUSE for the reason:-

1. The proposed use of the premises as a drinking establishment (Class A4) will result in harm to the amenities of neighbouring residents through increased noise and disturbance at unsocial hours, thereby conflicting with policies AG1 and AS1 of the Adur District Local Plan and the National Planning Policy Framework.

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

27th August 2013