exp 9/12

Development Control – Delegated Officer Report

Application Number: ADC/0381/09 **Recommendation – APPROVE**

Site: **75/77 High Street, Shoreham-by-Sea BN43 5DE**

Proposal: **Change of use of No's 75 and 77 from restaurant (Class A3) to hot food take-away (Class A5) with new shopfronts**

The Application

These 2 units currently form a single restaurant following the permission granted in November 2005 (SU/198/05) for change of use of No.77 from a shop to a restaurant associated with the existing restaurant at No.75 (which itself had commenced long ago before planning permission was required). There had also been an earlier permission in January 2000 (SU/185/99) for change of use of No.77 from a launderette to a restaurant. The premises have traded as the the Little Elephant Thai restaurant and take-away but was primarily a restaurant.

There was no condition on the above permission to prevent use as a take-away but, following the Amendment to the Town & Country Planning (Use Classes) Order 1987 in 2006, hot food take-aways became in a different Use Class (A5) from restaurants (A3). The current proposal for use of the combined premises as a Dominos pizza take-away, therefore, requires planning permission.

The proposals also include replacing the shopfronts with new silver-grey aluminium window frames, doors and stallrisers. These would have laminated glass and the glass in the window and door of the western unit (No.77) would have etched film applied to the internal surfaces (with a shadow-effect diamond logo) to hide the side of the cold store within.

Internally, new extraction and air-conditioning systems would be installed. The extract utilises the existing external grille on the outer wall face (with no external ducting proposed).

Consultations and Representations

West Sussex County Council: No objection, as the site is centrally located where customers can use more sustainable modes of transport than car. It is presumed the 2 rear car parking spaces would be for use by staff in conection with home delivery. Consideration should be given to imposing a condition requiring secure covered cycle parking for staff.

Adur District Council: The EHO recommends a condition be imposed restricting hours of business to 7:30am-11pm and requiring a scheme of noise attenuation for the extract and plant to be submitted and approved. Comments that this should include a more detailed assessment of noise from the kitchen extract, cold room and air conditioning plant to ensure that the necessary noise attenuation is provided to protect the maisonettes above.
The submitted report states that noise from the air-conditioning unit is 54dB(A) at 1m. The noise from the cold room is given as 35dB(A) at 10m, which equates to 55dB(A) at 1m. The combined noise of the two systems operating in tandem including the reflection from the hard surface would be 61dB(A), emitted a couple of metres below the windows of the home above. There is additionally the noise from the extract fan

measured at 59dB(A) at 3m which is approximately the distance from the fan position to the rear façade of the premises. 59dB(A) combined with 61dB(A) for the other two pieces of plant would indicate a noise level in the region of 64dB(A).

Adur District Conservation Advisory Group: Change of use is acceptable but the loss of shopfront is an issue.

Third Parties: 3 letters have been received.

The resident of No.7 Britannia House (above No.75) objects on grounds of noise, disturbance and smells. Adds that, if the change of use is hard to oppose because of the existing restaurant use, then he would urge for stringent conditions to be imposed on opening times and cooking odour control.

The 2 other letters are from a takeaway on the opposite side of the road (at No.72) stating that it would adversely affect their business [NB. this is not a valid planning consideration].

Relevant Planning Policies and Guidance

Adopted Adur District Local Plan 1993-2006 (ADC 1996) (saved policies): AG1, AB3-4, AS1
PPS 1 'Delivering Sustainable Development' (ODPM 2005)
PPS6 'Planning for Town Centres' (ODPM 2005)
PPG13 'Transport' (DTLR 2001)
PPG24 'Planning and Noise' (DOE 1994)
'Guidance on the Control of Odour & Noise from Commercial Kitchen Exhaust Systems' (DEFRA Jan 2005)
Circular 11/95: 'The Use of Conditions in Planning Permissions' (DoE 1995)

Planning Assessment

Policies

The main concerns are the effects of the proposal on the vitality and viability of the shopping centre, on the residential amenities of the locality including maisonettes directly above, on the character and appearance of the Conservation Area, and access considerations.

The premises are within Shoreham town centre shopping area where Local Plan policy AS1 applies. This states that permission will be granted for shopping and food and drink purposes falling within use classes A1 and A3 subject to compliance with criteria including no loss of amenity to nearby residents, and on-site parking and access arrangements being acceptable. It also states that development involving the loss of existing shopping provision (A1 and A3) will not be permitted if the proposal is likely to detract from the character and vitality of the shopping area [NB. Class A3 referred to above in addition to restaurants/cafes includes drinking establishments and hot food take-aways which, since 2006, are now in Classes A4 & A5 respectively]

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.

Effect on vitality of shopping area

Under policy AS1, there is no objection to the principle of the proposed A5 hot food take-away use in this location. With regard to the third party concerns raised about the number of restaurant and catering establishments, PPS6 makes it clear that it is not the role of the planning system to restrict competition, preserve existing commercial interests or prevent innovation.

Interruption of the continuity of what might be regarded as a prime shopping frontage is often a concern. However, in this instance, given the existing restaurant use and the current lack of any window display, there would be no adverse impact. To the contrary, use as a take-away would be likely to attract larger numbers of customers and add to vitality but not to a degree that would conflict with policy AB3.

Residential Amenity

With regard to the impact on nearby residents, the main concerns relate to potential odour nuisance from cooking and potential noise from customers and extract, air-conditioning and refrigeration plant. There are
maisonettes above these groundfloor units comprised in Britannia House. There are also some first-floor flats above shops opposite plus houses in West Street opposite.

Details of an extraction and ventilation system have been submitted as part of the application. The Council's Environmental Health Section have sought additional information owing to concerns about the cumulative noise of the kitchen extract system, the air-conditioning system and the refrigeration plant for the cold room. Following direct discussion with the applicant's consultant, the EHO states that there is no objection and this matter can be dealt with by imposing a condition.

With regard to the potential for noise nuisance from customers, the main concern is the effect during the late evening and night time period when residents have a reasonable expectation to be able to sleep free from disturbance. During the day time and early evening, such noise is not an issue as the premises are located within the retail area, fronting onto a relatively busy wide area of pavement plus the bus lay-by and busy road. However, past experience has shown that opening after 11pm has often resulted in unacceptable noise and disturbance from persons, including intoxicated youths, attracted to and congregating at takeaway premises and behaving rowdily.

Condition 3 of the previous permission SU/198/05 restricts opening hours to 8.30am-11pm (plus a further half hour for all activity to cease). This follows ADC's supplementary planning guidance "Late Night Opening of Restaurants and Take-aways" (1985) which resulted in a normal requirement to close take-aways in predominantly commercial streets at 11pm, and 10.30pm in more residential areas.

Although PPS6 (2005), under the new licensing regime, encourages more flexibility and generally less restriction of opening times to avoid concentrations of people leaving licensed premises, it is not considered that this necessarily implies that later opening is acceptable in all cases. In the present case, with maisonettes directly above, 11pm is considered necessary and the present applicants are agreeable to this.

There is a door at the rear of the premises which would be likely to be used as the entrance for deliveries and staff but not customers.

Visual amenity

The only significant external change is the replacement shopfronts with new silver-grey aluminium window frames, doors and stallrisers. These would have laminated glass. The glass in the window and door of the western unit (No.77) would have etched film applied to the internal surfaces (with a shadow-effect diamond logo) to hide the side of the cold store within. The cold store within and the resultant lack of any shop window display would normally be an issue but in this particular case, the existing window of No.77 already has etched glass/film with no view through the window. Given this fact plus the location at the end of the parade of shops, it is not considered that refusal could be justified. The proposals are of the Dominos 'corporate' style and are considered acceptable within this parade of modern shops. They would not affect the Conservation Area (policy AB4).

No external ducting is proposed. The new air-conditioning system proposes an external rear grille and the extract utilises the existing rear external grille. A rear door is to be blocked, leaving only one. None of these changes would have a material effect on the overall rear elevation of Britannia House.

Access and parking

WSCC Transport Planning Services have not raised a highways objection to the proposal because the site is centrally located and easily accessible by a choice of modes of transport. Their suggestion for a rear cycle store is impractical in this case. It should be noted that a previous application to remove a condition preventing take-away use at No.69 was allowed on appeal
in 2002 (SU/161/02); the Inspector did not agree that it would result in detriment to highway safety as a result of customers with cars stopping and waiting in the bus lay-by.

Recommendation

APPROVE for the reason:-

The proposed development would preserve the character and appearance of the Conservation Area and can take place without resulting in unacceptable detriment to the amenities of neighbouring properties, the vitality or viability of the shopping centre or highway safety. It would consequently not conflict with the relevant policies of the Adur District Local Plan (AG1, AB3-4, AS1).

Subject to:-

1. C1Ci
2. C14L ...between the hours of 7.30am and 11pm ... all activity shall cease by 11.30pm daily.

3. C14O
4. The air-conditioning system and cold room refrigeration shall not be installed except in accordance with further details which have first been submitted to and approved in writing by the LPA and these details shall include a more detailed assessment of noise from the associated plant in combination with the kitchen extract system. *R. as C14O*
5. The shop window of No.77 shall at all times have etched glass or etched film applied to its inner surface with a shadow-effect diamond logo. *R. To obscure the cold store within the building having regard to policy AB4 and AS1 of the ADLP.*

Case Officer. [redacted] Date.....

Chairman of DC Com[redacted] Date.07/12/09