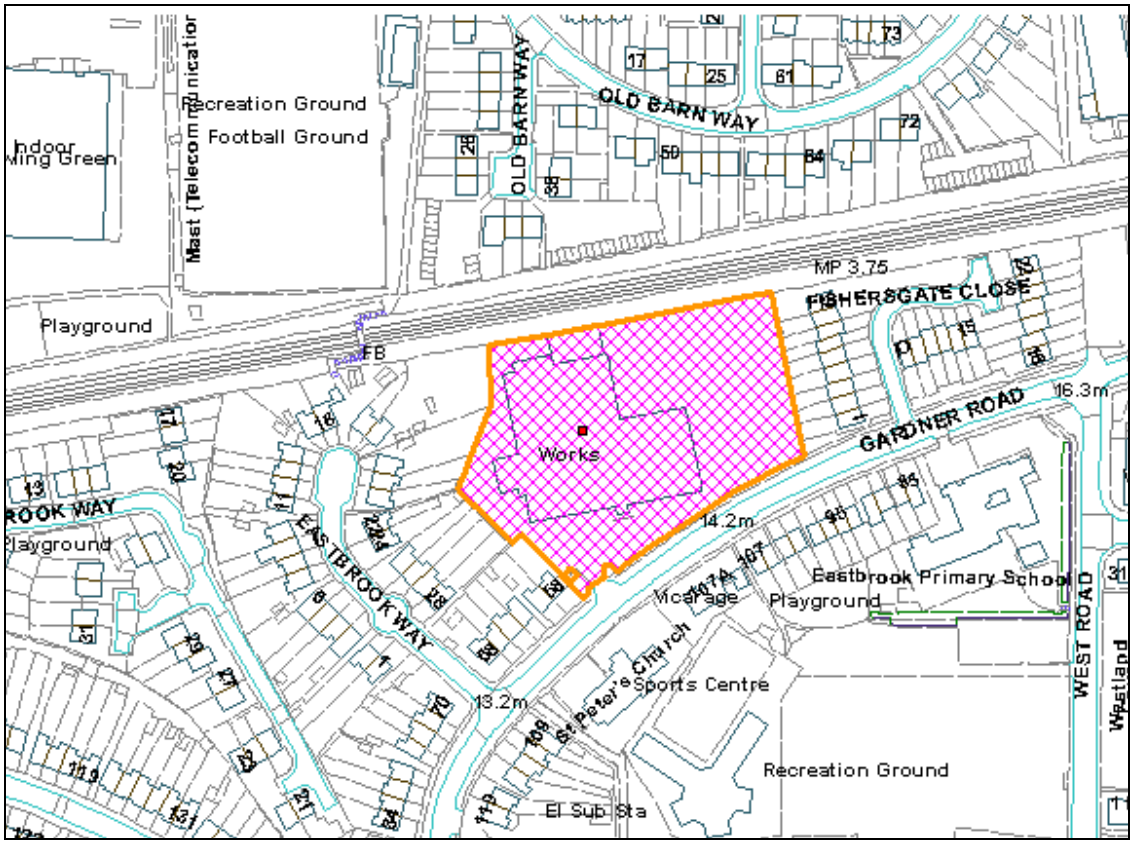
Application Number: AWDM/1038/15 **Recommendation – Refuse**

Site: **NTL Limited (Nynex House), Gardner Road, Southwick West Sussex, BN41 1QP**

Proposal: **Change of use from offices (B1a) and warehouse (B8) to offices (B1), non-residential institution (D1) and Assembly and leisure (D2) including internal alterations**

Applicant: Stiles Harrold Williams Ward: Eastbrook
Case Officer: Peter Barnett



Not to Scale

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Proposal, Site and Surroundings

The application relates to a 2 storey building formerly occupied by Virgin Media with offices on the ground floor and storage/warehousing on the upper floor. It has a part flat roof with a pitched glazed roof over its central area. It has an internal floor area of 5316sqm and the building is located towards the western end of the site. The eastern

part of the site is given over to car parking and there are 132 parking spaces on the site as a whole. It has been vacant since June 2012.

The application is proposing to change the use of the premises from B1 and B8 to B1, D1 and D2 comprising the following uses:

Ground Floor – Offices, shown on the submitted floor plan as being divided into 17 small office spaces totaling 2548sqm. The ground floor will also contain 4 communal meeting rooms plus kitchen and coffee area.

First Floor – Baptistery/meeting Room, sacristy, church hall, 3 conference rooms, gym, changing rooms and multi-functional community space

The submitted Planning, Design and Access Statement advises that "*the only interested party was that of a local community group (St Mary and St Abraam Coptic Orthodox Church) that intends to re-use the building for a mix of affordable office space and community uses, retaining significant number of jobs on site. This allows the building to retain the B1 office space on site under the management of the Church to finance necessary refurbishment, fit out works and continuous occupation, whilst bringing significant social benefit to the area at large*."

No extensions are proposed and there are to be only minor internal changes. There are two vehicular accesses off Gardner Road serving the site.

The site is located within a largely residential area, with houses to the north, south, east and west. The Brighton-Worthing railway line runs immediately to the north.

Relevant Planning History

SW/55/92 - Change Of Use From Industrial To Warehouse And Offices With Demolition Of Part Of Existing Premises To Form Parking Areas (155 Vehicles) – approved 28/9/92. The permission is subject to a condition restricting hours of working to 8am-6pm Mondays to Saturdays inclusive with no working on Sundays or Public Holidays

SW/10/94 - Removal Of Condition 10 Of Permission SW/55/92 (Restriction Of Working Hours) – approved 23/1/95. This permission removed the hours of working restriction but it was made personal to Nynex CableComms Ltd only and did not inure for the benefit of the land

SW/26/94 - Use As Regional HQ By Nynex Cable TV/Telecomms (Amendment To Previous Perm. To Increase Use As Offices To Max Of 3,965 SQ.M & Reduce Warehousing) – approved. This was personal to Nynex.

SW/67/98 - Vary Conditions 3,4 & 5 Of SW/26/94 (To Increase Offices To 4,490SQ.M Floor-Space, Reduce Storage To 720SQ.M & Amend Car Parking Layout To 199 Spaces) – approved. This was personal to Cable & Wireless.

AWDM/1626/14 - Change of use from office (B1a) and warehouse (B8) to non-residential institution (D1) and Assembly and Leisure (D2) including internal alterations and external painting – withdrawn

AWDM/0981/15 - Application for a Lawful Development Certificate for proposed use of Nynex House for a mix of B1 (business) and B8 (storage) uses with ancillary showroom– Certificate granted

Consultations

West Sussex County Council: The ***Highway Officer*** has no objection. Comments that the site has two existing access points which are set back from the main carriageway and provide good visibility in both directions of Gardner Road. The applicant may wish to consider using one access for the IN movement and the other for the OUT movement as the access widths are only wide enough for one car to pass at a time.

Regardless of previous applications, WSCC maximum parking standards indicate that the proposed development should provide a maximum of 226 car parking spaces. The development can provide 132 spaces and WSCC asked the applicant to provide evidence to show that this level of parking capacity can be accommodated.

The information provided estimates as a worst case scenario there could be 150 church attendees at one time. The church is open all day from early morning to late evening, 7 days a week. There is a community mini-bus service which runs 4 times and can accommodate 15 people at a time (up to 60 people) at the weekend. It also operates once in the week. The use of this mini-bus goes some way to mitigating the number of sole occupancy car trips, and this could provide a useful way of reducing the number of trips to/from the site for certain church activities.

The gym would be run by the church and would only be open to the church members and the office workers. There are 19 apparatus in the gym which suggest at any time 19 pieces of equipment can be used, although this does not indicate membership level, or that this is a maximum number. WSCC would recommend a suitably worded condition to ensure the gym remains exclusively for the use of the church and the office workers only which will minimise the number of external trips created to/from the site.

An interrogation of the TRICS database has been undertaken to understand the general trip rate for mixed use development like this. No records are available to compare. A comparison of B1 office space of this size (2,548sqm) suggests a trip rate in the network peak hours of 24 trips in the morning half hour peak and 23 in the afternoon half hour peak.

From the information provided, four peak hours of use have been identified by the applicant as follows:-

Early Morning Peak (5am-7am) - Church use /Gym peak
Network Peak (8.30am to 9am) - Office
Network Peak – (5pm to 5.30pm) - Office
Early Evening – (6pm-7pm) - Gym Peak/Church Use

Therefore it can be assumed that during the daytime approximately 1/5 of the car park could be occupied for office use, leaving 4/5 available for the other uses. Given that the gym users are more likely to already be at the site it is not envisaged these trip numbers will be high. Other mitigating factors including the sites close proximity to Fishersgate train station and frequency of local bus routes should mean that the site can operate effectively without any disruption to the highway network. As stated in earlier correspondence, parking within the local roads is controlled where necessary.

The mixed use nature of the site has been considered and although the current parking provision does not meet maximum standards as set by WSCC, it is felt that each use has different peak hours which will not have a detrimental impact on highway capacity or safety. To mitigate any unforeseen impacts from these uses all sharing the same site a site Travel Plan should be developed within 6 months of opening.

Adur & Worthing Councils: The ***Environmental Health*** officer comments that no information is given about the opening hours of the gym or the rest of the site. The church service time table shows services commencing at various times throughout the week, but as early as 05:00hrs on Tuesdays. Opening hours reflecting the times of these services would be considered unreasonable as they would be likely to have a detrimental effect on residential amenity of the surrounding area. Recommends restricting opening hours to 08:00 – 23:00 Monday-Saturday and 09:00 – 22:00 on Sundays and Bank Holidays. If external plant or lighting is proposed then details should be required by condition. No details of kitchen extracts have been submitted and such information is required prior to installation. It would be advisable to set a noise limit as there is a potential for amplified music to be played: The level of noise emitted from the site shall not exceed 50dB LAeq 5 mins at any boundary of the site.

The **Economic Development** Officer strongly objects. Nynex House is 57,228 sq ft of B1/B8 floor space with 132 car parking spaces on site and has been vacant for a number of years, with marketing of the ground floor commencing in 2012. This site is situated in close proximity to the A259 with good rail and bus links. The ground floor currently comprises of good quality office accommodation and has the capacity to be returned to industrial use to meet current industrial demand. Please note Economic Development (ED) does not currently have any outstanding requirements from companies looking for office space in Adur. The first floor of this site has been unoccupied for many years and has been stripped out leaving an open plan shell, which would be suitable for industrial use.

In Adur there is 3,778,132 sq ft of B Class employment floor space, of which 92% is currently occupied or under offer. Please note that 94.7% of industrial/warehousing floor space is currently occupied or under offer in Adur and ED are struggling to identify

suitable industrial sites, to accommodate inward investment and indigenous business expansion.

ED are aware that a number of industrial companies in Brighton & Hove (B&H) are looking to expand, but are unable to identify suitable industrial expansion space within the B&H area and therefore ED has seen an increase in migration of industrial companies from B&H into Adur. Nynex House is well positioned to attract a company expanding from B&H, as it is located close to the B&H western boundary and is within close proximity to good rail and bus links. ED currently have 8 companies looking for industrial floor space in Adur and are struggling to identify potential sites, this equates to a current unmet demand of 203,000 sq ft of industrial floor space. An example of this is a motorcycle manufacturer who is in the process of trying to securing Nynex House, to enable expansion of this global export company currently based in Brighton.

Please note that Nynex House has also been identified as a potential relocation site to help bring forward the regeneration of Shoreham Harbour. This project could potentially displace a considerable number of non-port related industrial companies, which will require industrial commercial space in close proximity to their current location, to safeguard local employment and supply chain.

Nynex House is a substantial commercial site, in a key location that has the potential to support future industrial business growth, business retention and inward investment opportunities. Economic Development strongly objects to this application for change of use to D1/D2 for 29,799 sqft on the first floor, as this application does not demonstrate that this floor space is no longer viable for industrial use and would lead to a total loss of 57,228 sqft of potential industrial floor space in Adur.

Network Rail: No objection

Health & Safety Executive: Advise against development. The site of the proposed development is in close proximity to the fuel storage facility at Texaco Wharf. As it handles potentially hazardous substances, the Health and Safety Executive (HSE) has designated consultation zones around the facility. Within these zones the HSE would advise against certain types of development according to their level of sensitivity. The site lies within the Inner Zone and Middle Zone and the proposed uses of the site would be classified as a mix of Workplace (B1) and Indoor Use by the Public (D2). The proposed development would provide a total of 5,316 sqm floorspace for these uses. Due to the location, uses and size of the proposal the HSE would advise against development.

The HSE's role in the planning process is an advisory one and it is for planning authorities to take all relevant factors and advice into account in deciding whether or not planning permission should be granted. However, the Department for Communities and Local Government has advised planning authorities that any advice from HSE that planning permission should be refused for development at, or near to, a major hazard site or major accident hazard pipeline, should not be overridden without the most careful consideration. If a planning authority is minded to grant approval to a development

where HSE has 'advised against' (AA) it then the planning authority is required to give HSE 21 days advance notice of this intention. HSE will then consider whether or not to request that the Secretary of State call-in the application for his/her own determination.

Southern Water: A formal application for a new connection to the foul and surface water sewer is required.

Representations
7 letters of objection received from the occupiers of 99, 105 Gardner Road, 22 Fishersgate Close, 5, 21 Eastbrook Way:-

- This is no place for a commercial building, being within a residential area.
- This site should be reserved for housing
- There is already an abundance of community facilities within walking distance of the site
- Existing building would be better used as a cinema, café and retail units
- Parking problem in the area
- This proposal would not bring any benefit to people from the area
- Concerns at number of people coming and going

Relevant Planning Policies and Guidance

Adur District Local Plan 1993-2006 (ADC 1996) (saved policies): AG1, ACS5
Proposed Submission Adur Local Plan (2014)
National Planning Policy Framework (March 2012) Policy 26

Relevant Legislation

The Committee should consider the planning application in accordance with:
Section 70 of the Town and Country Planning Act 1990 (as amended) that provides the application may be granted either unconditionally or subject to relevant conditions, or refused. Regard shall be given to relevant development plan policies, any relevant local finance considerations, and other material considerations; and
Section 38(6) Planning and Compulsory Purchase Act 2004 that requires the decision to be made in accordance with the development plan unless material considerations indicate otherwise.

Planning Assessment

Principle

The site is not identified for any particular use in the Local Plan. Saved Policy ACS5 supports proposals to develop, extend or improve community facilities within the built up area.

However, emerging policy in the form of Policy 26 of the Proposed Submission Adur Local Plan seeks to protect and enhance existing employment sites and premises. It

states that "*the conversion or redevelopment of land or buildings, currently or last in class B1, B2 or B8, for other uses will be resisted unless it can be satisfactorily demonstrated that the site or premises is/are genuinely redundant and unlikely to be re-used for B1, B2 or B8 uses within the Plan period, having regard to the following factors:*
(i) No effective demand exists or is likely to exist in the future to use the land or buildings for employment generating activities. Consideration should include the length of time the property has remained vacant, the attempts made to sell/let it, and the demand for the size and type of employment premises in the area; or
(ii) The loss of a small proportion of employment floorspace would lead to a significant upgrade of the remaining employment floorspace.

Where either of the above criteria has been satisfied, a reduced amount of employment on the site as part of a mix of uses will be considered. Employment generating uses should be considered as part of this mix of uses. Complete loss of employment uses will only be acceptable where it has been demonstrated to the satisfaction of the Local Planning Authority that partial employment use cannot realistically be achieved."

The Adur Employment Land Review Update (2014) found that existing employment areas in Adur are reasonably well occupied. Any loss of employment land to other uses such as residential is likely to have a detrimental impact on the economy in the longer term.

The current proposal retains B1 use on the ground floor but it is unclear how the B1 units would be managed. Furthermore, the first floor (some 29,799sqft or 2,768sqm) would be lost to a non business use. The Council is aware of 8 companies looking for industrial floor space in Adur who are struggling to identify potential sites. An example of this is a motorcycle manufacturer and distributor who is in the process of trying to securing Nynex House, to enable expansion of this global export company currently based in Brighton (a separate application for a Certificate of Lawfulness for proposed B1/B8 use has recently been granted to this company).

The current application is supported by marketing information which suggests that the site has been marketed since June 2012 but that there has been no users identified. The report identified barriers to future business use, such as poor configuration, lack of local amenities for staff, need for costly works to make the building habitable, its lack of prominence and its proximity to residential properties.

The report concludes that "the outlook for the office or industrial demand in Portslade is not good and indicates the building will remain vacant if Nynex House is limited to office/industrial."

However, the Council's Economic Development Officer has advised that the site has been perceived as being marketed at above market value and this has previously been deterring interest in the site. The price offered has recently been reduced and the Economic Development Officers have been helping to promote this site to businesses to secure employment occupation, with interest shown by a number of companies.

The current proposal retains B1 use on the ground floor but it is unclear how the B1 units would be managed. Furthermore, the first floor (some 29, 799sqft or 2,768sqm) would be lost to a non business use. The Council is aware of 8 companies looking for industrial floor space in Adur who are struggling to identify potential sites. An example of this is a motorcycle manufacturer and distributor who is in the process of trying to securing Nynex House, to enable expansion of this global export company currently based in Brighton (a separate application for a Certificate of Lawfulness for proposed B1/B8 use has recently been granted to this company).

In view of this information, it is clear that there is demand for the re-use of the building for business purposes provided it is available at a realistic price. The conclusions of the applicant's marketing report are flawed therefore and the future use of the building for office/industrial use is a real possibility.

The proposal would offer a range of community uses although it is unclear how these would be made available to the public. However, there are already a number of similar community uses available in the vicinity of the site, including Fishersgate Community Centre, Fishersgate Day Nursery and Southwick Leisure Centre, and it is not considered that there is a compelling need to allow this development in this location, particularly when there is a strong likelihood that the building will be occupied for business purposes in the near future.

Visual amenity

The application does not propose any significant external changes other than re-painting.

Residential amenity

The proposed uses would be limited to within the building and the potential for noise disturbance to residents is not expected to be significant. However, the Environmental Health Officer has recommended that the level of noise emitted from the site should not exceed 50dB.

Activity from vehicles coming and going should not be unduly harmful or unneighbourly to residents. However, the Environmental Health Officer has recommended restricting opening hours to between 08:00 – 23:00 Monday-Saturday and 09:00 – 22:00 on Sundays.

Accessibility and parking

The site is accessed from Gardner Road via two entrances. The site is also close to public transport, including Fishersgate Railway Station, bus stops and a cycle route. There is a large car park capable of accommodating up to 137 spaces. The West Sussex maximum parking standards for the proposed uses as proposed requires a

maximum of 226 car parking spaces. While this is a considerable shortfall, West Sussex Highways do not have an objection as they consider that each use has different peak hours which will not have a detrimental impact on highway capacity or safety. The site is also in a sustainable location, close to a railway station and bus stops. To mitigate any unforeseen impacts form these uses all sharing the same site a Travel Plan should be developed within 6 months of opening.

Proximity to health and safety hazard

The site is in close proximity to the fuel storage facility at Texaco Wharf. As it handles potentially hazardous substances, the Health and Safety Executive (HSE) has designated consultation zones around the facility. Within these zones the HSE would advise against certain types of development according to their level of sensitivity. The proposed uses of the site would be classified as Workplace and Indoor Use by the Public, which individually would fall within Sensitivity level 2 but could arguably be seen as Sensitivity Level 3 if taken together. The proposed development would provide a total of 5,316 sqm floorspace for these uses. The site lies within the Inner and Middle Consultation Zones and the HSE matrix advises that such developments (Sensitivity Level 2 or 3) should not be allowed due to the substantial increase in numbers of people at risk.

The applicants have argued that the building would not be fully occupied at the same time and that the number of people occupying the building at any one time would be less than if the site were used under its current lawful use as B1/B8 premises. They have also pointed out that both the existing and proposed uses would fall within the Advise Against category and, as such, they argue that an equal assessment should be made of the risk.

However, a B1/B8 user could occupy the premises without requiring planning permission and would not therefore be required to be referred to the HSE. The current proposed change of use would need to be referred and could be 'called in.' There is also uncertainty over how the building will be used. The submitted information suggests that the gym, conference rooms and multi-function areas would not be used at the same time as the offices but it is considered to be unlikely that the Church would not want to make use of these facilities during the day. As such, there is the potential for large numbers of people to be using the premises at the same time.

On this basis, it is likely that there would be an unacceptable increase in the risk to human health, contrary to the advice of the Health and Safety Executive.

Recommendation

REFUSE for the reasons:-

1. The local planning authority is not satisfied that no effective demand exists or is likely to exist in the future to use the building for employment generating

activities. Consequently, the proposed change of use of the unit to a non-business (Use Class B1, B2, B8) use would result in the loss of valuable employment land and is likely to have a detrimental impact on the local economy in the longer term, contrary to Policy 26 of the Proposed Submission Adur Local Plan 2014 and the relevant paragraphs of the National Planning Policy Framework which seek to support sustainable economic growth.

2. The site lies in close proximity to the fuel storage facility at Texaco Wharf and due to the substantial increase in number of people using the building, there would be an unacceptable increase in the risk to human health, contrary to the advice of the Health and Safety Executive.

28th September 2015