Development Management - Delegated Officer Report

Application Number: **Recommendation – Refuse**
AWDM/0672/12

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

Proposal: **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**

Date of site visit: 29 June 2012

Neighbours checked: Y

Additional neighbour notifications: N

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 road 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 6.30am Monday to Thursday, 6.30am to 12.30am Fridays, 8am to 12.30am Saturdays and 8am to 11pm Sundays.

Relevant site 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

Consultations

Adur & Worthing Councils: The Environmental Health Officer has stated that it is difficult to advise on appropriate hours for the above Café, as during the day it has traditional A3 use, with most customers dining. However, the evening use appears more akin to A4 use; it has been reported that customers mainly go to have a drink and watch the football or play cards. The lease agreement states "The hours of opening will be approximately 8.45am to 11:30pm Monday to Saturday (inclusive) and 8:45am to 10:30pm Sundays. On the 31st December each year the hours may be extended to 2am on the 1st January."

He is of the view that up to 11pm is a reasonable time for an A3 use in this area surrounded by residential properties, 10:30pm on a Sunday. He understands the Turkish restaurant trades to 11pm and the fish and chip shop trades to 9pm. Therefore the hours requested are inconsistent with other similar premises in the square and allowing hours beyond 11pm would change the character of the area and would impact on amenity of residents who may subsequently have their sleep disturbed by customers leaving the premises late at night. With regards to start times he has suggested they stick to what is agreed in the lease.

Finally, there have been issues with noise from music emanating from the building in the past. (he understands the café is situated in what used to be a store room for a shoe shop) This was dealt with under the Licensing Act as they had no license for regulated or live music. However, changes to the licensing regime will mean that amplified live music or other recorded music in relation to certain dancing will not be covered by licensing in the future. He requests that a planning condition be attached prohibiting the playing of recorded music, other than background music, and the playing of live music; until such time a scheme to sound insulate the current structure has been submitted and approved by the planning department.

Representations

4 letters received from the occupiers of 125, 129, 131 Southwick Square and from the office of Tim Loughton MP objecting to the application on the following grounds:

- Loud music is played which keeps residents awake at night
- Café Cube is already trading outside permitted hours and is also open on Sundays
- People have been seen drinking and smoking beyond their licensed hours
- Offensive language used which is audible through single glazed windows which are often kept open and overlook flats opposite
- Early opening hours proposed will attract lorries and large vans

- Inappropriate use in a residential area

Relevant Planning Policies
Adopted Adur District Local Plan 1993-2006 (ADC 1996) (saved policies): AG1, AS1
South East Plan (GOSE 2009): CC1, CC6, BE1
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 hours would have on residential amenity, particularly as it would appear that the premises are operating outside of the lawful use.

Visual amenity

No change to the outside of the premises is proposed

Residential amenity

The main issues are:

1. The extension of the hours and the impact on amenity which would arise
2. The lawfulness of the use in question

The lawful use of the premises is as a restaurant (Class A3), which is appropriate and accords with policy AS1. However, a sign at the entrance to the premises (which is accessed via stairs at the rear) states that the unit is a “bar, restaurant, takeaway” which extends the use of the premises into Classes A4 (drinking establishments) and A5 (hot food takeaways). Given the proximity of residential properties to the premises it is not considered that a bar use in this location is appropriate. A takeaway use may also be unneighbourly. Officers will therefore make further investigations into the use with the possibility of enforcement action being necessary to ensure that the permitted use only is carried out at the premises and that the permitted opening hours are respected.

The application seeks a 2 hour increase on Friday and Saturday nights and a 30 minute increase Sunday to Thursday nights. In the mornings, the premises are to be open 2 ¼ hours earlier Monday to Friday and 45 minutes earlier at weekends. 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 therefore be required if planning permission were granted for the hours sought.

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.

While there are other restaurants in the Square, these close at 11pm at the latest. Indications are that Café Cube is regularly open to the hours currently sought, including on Sundays, which it is not permitted to do. Complaints of noise have been received and the EHO considers that an extension of hours would not be appropriate for a restaurant use let alone a drinking establishment. Similarly, opening at 6.30am, while not likely to lead to as much disturbance as a late-night bar, is still likely to result in noise and activity at a time in the morning when most residents can reasonably be expected to be asleep.

The proposal is therefore considered to be likely to lead to harm to residential amenity through increased noise and disturbance at unsocial hours.

Accessibility and parking

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

Recommendation

REFUSE for the reason:-

1. 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.

Is recommendation contrary to letter(s) of representation? N

Case Officer: Peter Barnett Date: 11 July 2012

Authorised by: Jo Morin Date: 12 July 2012