Expiry Date - 07/08/2023

Development Control – Delegated Officer Report

Application Number: AWDM/0704/23 **Recommendation – APPROVE**

Site: **Unit 3 The Montague Centre Liverpool Road Worthing**

Proposal: **Proposed application for a Change of Use from retail unit to restaurant and proposed new extraction flue terminating on roof.**

Last visited: 22.06.2023

Neighbours checked: Y

Additional neighbour notifications: Y – revised siting of extract flue

Proposal, Site and Surroundings

The application relates to a ground floor shop unit (approximately 130sqm) fronting the south-west corner of the pedestrian precinct within the Montague Centre. The unit was previously occupied by GAME store until January 2023, and at the time of the officer site visit was occupied by a luggage store. The unit adjoins Nando's to the west (Unit 1), and HMV to the north (Unit 4). McDonalds occupies a double unit opposite (8-10).

The site is located within Primary Zone A of the central shopping area with a mix of uses surrounding the site. The site is within the South Street Conservation Area. To the west side of the Montague Centre, fronting Alexander Terrace is the grade II* listed Desert Quartet statues. To the north of this there are residential properties fronting Alexander Terrace (which back onto the service ramp to the Montague Centre). There are listed buildings of various uses including residential within Liverpool Terrace to the west of Liverpool Gardens.

Permission is sought for the change of use to a restaurant within Class E. Details of the proposed operator are unknown. The submitted floor plan shows a customer seating area in front of a service and preparation counter with an extraction canopy above. The ductwork for the extraction canopy, including carbon filter box and ESP systems, is shown to be positioned internally, extending westward along a service corridor before angling upward through an internal storeroom and (following amendment) terminating on the flat roof just east (inside) of the parapet wall comprising the west elevation of the Montague Centre and directly adjacent to the Desert Quartet sculptures which sit on the flat roof of a columned loggia over the pavement of Alexander Terrace.

The restaurant hours of operation are proposed as 12:00hrs to 23.00hrs Mon-Fri, 12.00hrs to Midnight on Saturdays and 12.00 to 22.00hrs on Sundays.

No external changes are proposed to the existing shopfront.

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Relevant Site History:

None specific to this Unit.

The Montague Centre

Outline planning permission for the Montague Centre was granted in 1987 under WB/125/87. Condition 17 states:-

“Units 1-11 and the store shown on the illustrative plan shall be used for retail purposes only.

Reason: To ensure that the units are not uses as offices which would detract from the primary retail function of the town centre. “

Although the intent is clear, condition 17 is loosely worded and does not make reference to either the provisions of the Town and Country Use Classes Order or the Town and Country Planning General Permitted Development Order.

AWDM/1624/22 Full planning permission for a maximum of three additional floors above the Montague Quarter Shopping centre to provide 42 No. residential units. Pending consideration (Planning Committee 07.06.2023 resolved to Grant Permission subject to S.106 Agreement).

AWDM/1625/22 Application for Listed Building Consent for alterations to Fire Escape access to form a new residential entrance. Pending consideration (Planning Committee 07.06.2023 resolved to Grant Consent).

AWDM/1640/15 Construction of new freestanding glazed kiosk and change of use of units 1 and 2 and 6 to 12 to create A3 floorspace at Montague Shopping Centre, and public realm improvements, including landscaping and other associated works. Permitted 21.07.2016. Not implemented.

Consultations

WSCC: The LHA has raised no objection commenting that no vehicular access is associated with this site, whilst servicing arrangements are assumed to remain as existing. The proposed change of use is not anticipated to give rise to significant material intensification of movements to or from the site. The LHA recognises that the site is within a sustainable town centre location within walking distance to public transport links and public car parks. Liverpool Road and the Montage Centre are pedestrianised in this location so most trips to the unit by customers are anticipated to be on foot, as per the existing situation.

In summary, the LHA does not consider that this proposal would have an unacceptable impact on highway safety or result in 'severe' cumulative impacts on the operation of the highway network, therefore is not contrary to the NPPF (paragraph 111) and there are no transport grounds to resist the proposal.

Southern Water

Southern Water requires a formal application for a connection to the public sewer to be made by the applicant or the developer.

The Applicant should be advised that a wastewater grease trap should be provided on the kitchen waste pipe or drain and maintained by the owner or operator of the premises.

It should be noted that under the Water Industry Act 1991 it is an offence to "Throw, empty, turn or permit to be thrown or emptied or to pass into any drain or sewer connecting with a public sewer any matter likely to injure the sewer or drain or to interfere with the free flow of its contents."

Where surface water is being considered for discharge to the Southern Water network the hierarchy reflected in part H3 of the Building regulations should be followed. Whilst reuse does not strictly form part of the hierarchy Southern Water would encourage the consideration of reuse for new developments.

There is 3 inches decommissioned water distribution main crossing the site.

It is possible a sewer now deemed to the public could be crossing the development site.

Adur and Worthing Councils

Environmental Health Officer (Public Health)

There are no EH objections to the kitchen extract system subject to the noise mitigation in the acoustic report being implemented.

EHO further response*: "I saw the assessment was looking at the new development. Looking at the existing Alexander Terrace layout, there are no windows directly overlooking the extract system and the current property is further away from the extract than the proposed new units which were assessed in the acoustic report, so the noise levels will be even lower for the existing homes. The odour abatement has pre filters for grease, a ESP for smoke and odour and carbon filters for odour so should be quite robust."*

Environmental Health (Food Safety team)

There are insufficient toilets for members of the public. Any major refurbishment, which includes this application, should consider providing an accessible toilet. There is a shortfall of 2 WCs and 1 urinal short of AWC's

standard. It is the Food Business Operator's obligation to meet requirements of the Local Government (Miscellaneous Provisions) Act 1976, Section 20. AWC's minimum standard is that 1 WC equates to a maximum of 24 covers and there are 54 covers on the plan.

Although the internal layout is not part of the planning approval, please could you share our standard for toilet provisions with the applicant. It is beneficial to adjust the plan at the earliest convenience before any structural alterations are completed.

The Food Business Operator will be required to register the food business, 28 days before trading. The link to our online food premises registration can be found here:
https://www.adur-worthing.gov.uk/businesses/environmental-health/food/starting-up-a-food-business/

Private Sector Housing team: No comment.

Representations:

An objection has been received from the occupier of Flat 3, 1 Alexander Terrace on grounds of highways, access and parking, loss of general amenity, and privacy light and noise, commenting:-

The proposals show a service access to Unit 3 at first floor level from the rear service ramp to the Montague Centre. Residents in Alexander Terrace have bedroom windows lining the service ramp. Because of this proximity, the use of the access ramp for Unit 3 will need to be controlled as it has for Nando's in Units 1 and 2, i.e. that deliveries, collections and servicing can only take place between 07.00 and 21.00 Mon to Sat, and 10.00 and 18.00 on Sun.

The Noise Impact Assessment focusses on a residential window 20 metres to the south. The rear of Alexander Terrace is about 30 metres to the northwest. Whilst the residents in Alexander Terrace will only have an oblique view of the proposed equipment, the noise and smells from the new Nando's extractor is already compromising our living conditions and limiting how we ventilate our rooms. This second extractor will exacerbate this.

A further objection has been received following re-consultation on the revised siting of the extract flue:

The amendments don't change the concerns with this proposal for existing residents in Alexander Terrace. Still required will be a condition controlling the use of the access ramp for Unit 3 so that deliveries, collections and servicing can only take place between 07.00 and 21.00 Mon to Sat, and 10.00 and 18.00 on Sun. because of the proximity of bedroom windows in Alexander Terrace to the access ramp.

Relevant Planning Policies

Worthing Local Plan policies (WBC 2023): SP1, SP3, SS3, DM5, DM13, DM15, DM16, DM22, DM23, DM24
Worthing Town Centre Study Update (Match 2020)
Worthing Retail & Town Centre Uses Study (2017)
Revised National Planning Policy Framework (HCLG 2021)
National Planning Practice Guidance (CLG)

Planning Assessment

Principle

Changes to the Town & Country Planning Use Classes Order made in 2020 now place retail and restaurant uses within the same Use Class E, allowing premises to change between the various different uses within that Class without the need for a planning application except where restrictions are in place. Such a restriction was imposed on the original planning consent for the Montague Centre in 1987 although it is questionable whether the restriction imposed by this condition still 'bites' owing to its 'loose' wording.

Policy SS3 within the adopted Local Plan sets out the overarching development principles for the town centre by seeking to ensure that the types of uses and activities that best meet the aspirations and vision for the Town Centre are realised. It seeks to maximise the opportunities presented by the town centre location, building on what's already special about the town and exploiting its 'unique selling points' including the seafront setting, historic and cultural assets, green spaces and burgeoning creative sector and digital to strengthen the Town Centre as a location for shopping, leisure, community, culture, business and enhance its tourist appeal.

Policy DM13 sets out the more detailed approach to shopping frontages. This states that the Primary Shopping Frontage will be the focus for retail uses within the centre and the Council will seek to retain 65% of units in retail use to ensure that the centre retains it roles as a sub-regional shopping centre and meet the shopping needs of the town's population. Uses such as drinking establishments and takeaways together with other uses that would detract from the overall shopping function of the frontage will be resisted.

The supporting text recognises that bars, restaurants, cafes and similar uses can have an important role to play in the long-term success of the town centre as they can broaden the daytime attraction as well as supporting a vibrant evening economy (particularly during the 'twilight' period after retail outlets close. It is a sector that is becoming increasingly important and the desire to see it improved has been reflected in a number of the Council's strategies. In general, the Council will be supportive of proposals that seek to expand operations beyond the usual daytime economy into evening / night-time economic opportunities. However, careful consideration will be given as to the appropriateness of certain types of activities and operational hours. The over-concentration of such uses in a centre can create significant problems. It will be important to ensure that such development cumulatively does not harm the character and function of a centre, undermine its vitality and viability, or lead

to significant problems of crime, disorder and noise that would unacceptably impact on the amenity of those living and working in the area. A careful balance is required between the needs of (and impacts on) local residents with the economic benefits of promoting an enhanced evening and night-time economy.

The Worthing Town Centre Retail Study Update (March 2020) predates the changes to the Use Classes Order but was prepared to support the emerging Local Plan and in response to earlier legislative changes to the General Permitted Development Order which allowed greater freedoms to change between uses as 'permitted development'. Whilst acknowledging that the role of retail should be central to any town centre strategy moving forward, it identifies the need to inject life into our high streets has introduced new, multi-dimensional elements to town centres which should be promoted and incorporated alongside retail including the development of an 'experience' for town centre visitors, town centres as genuine 'hubs' for communities with the need to create vibrant social, commercial and cultural destinations, alongside a growth in town centre living.

The Update refers to the earlier 2017 Study which identified the (now lapsed) permission for the Montague Centre (AWDM/1640/15) as a key to transforming this part of the town centre as a new eating, drinking and shopping destination, increasing footfall and on-street activity. The proposals were considered to represent a positive development for the town centre assisting the Montague Centre making a more active contribution to the overall town centre offer. The 2107 Study identified a town centre that was performing adequately with an improved café/restaurant/bar sector, but with a substantial opportunity to take a step change upward in terms of quality, range, attraction and competitiveness. Improvements to the comparison and eating/drinking sectors were identified as being an important part of the strategy.

The high street has been hit hard by the challenging economic circumstances of recent years ranging from Brexit, the Covid-19 pandemic and its associated restrictions, and more recently the 'cost of living crisis'. This is has exposed the vulnerability of the town centre with the comparison goods category in particular having experienced substantial decline in recent years with national multiple retailers leaving the town. However, the 2020 Update recognises positive trends in the contribution of a strong selection of good quality independent and small business café and restaurant operators, micro-breweries, art shops and galleries within the town centre. This diversity of small, independent operators is evident within the Montague Centre with all the available small units created (under AWDM/1529/18) on the eastern 'arm' of the pedestrianised thoroughfare (following the departure of Beales department store) now occupied, and only 2 vacancies on the western 'arm, Unit 8 (formerly 'Curds & Whey') and the long-vacant Unit 11. In the circumstances, it is considered the proposed restaurant use of this small unit would contribute towards maintaining the vitality and activity of the Montague Centre, and support the multi-dimensional aspirations of the town centre.

Impact on the amenities of neighbouring occupiers

The site is within an established commercial area where some noise from associated activities would reasonably be expected. Whilst commercial uses generally surround the site there are dwellings in close proximity to the site with flats to the north in Alexander Terrace and flats above the shops in Montague Street to the south being the most closely sited. The 42no new dwellings proposed under AWDM/1624/22 and AWDM/1625/22 is also a material planning consideration. As originally submitted, the position of the proposed extract flue within the rooftop service yard was not compatible with the implementation of the latter and its position has subsequently been revised. The flue would project 1.15m from the flat roof of a second-floor storeroom on the service deck and would be sited forward (east) of a bank of existing condenser units on the same section of roof. The latter also sit below the upper edge of the parapet roof.

The flue outlet would be sited approximately 17m south of the blank flank wall of 1 Alexander Terrace. A revised Noise Impact Assessment has been submitted which assesses the proposed equipment in relation to the nearest noise-sensitive (residential) receptors which are the proposed (west-facing) flats AWDM/1624/22 and AWDM/1625/22. Subject to implementation of the mitigation measures recommended in the Report (by DAAGroup dated 6th June 2023) which includes: (i) an attenuator to be fitted on the discharge side of the fan to reduce duct breakout noise on the fan inlet, (ii) an acoustic enclosure to attenuate break out noise from the fan, and (iii) duct to be isolated from structure using anti-vibration mounts, the EHO is satisfied that there will be no adverse impacts on residential amenity in terms of nose and odours.

Use Class E(b) constitutes restaurant use of a property for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is *mostly* undertaken on the premises thus allowing for an element of takeaway sales. Since the Covid-19 pandemic there has been a notable increase in takeaway deliveries from restaurants in general by third party delivery companies (such as ‘Just Eats’, ‘Deliveroo’ etc.). It is known that noise from mopeds used by delivery collection drivers coming and going from McDonalds and more recently Nando’s has led to complaints from residents in nearby Liverpool Terrace and Alexander Terrace. Whilst in this case it would not be reasonable or appropriate to seek to prohibit or otherwise limit sales of takeaway food from the proposed restaurant premises, it is suggested that a management plan is agreed with the restaurant operator that seeks to implement measures to manage delivery collections in terms of collection procedures and operational protocols in order to minimise impacts on neighbour amenity. This should be a condition of planning permission to be agreed prior to commencement of the use.

Visual amenity and impact on designated heritage assets

No external alterations are proposed other than the flue outlet on the roof described above. Providing the upper most part of the flue and any associated

cowl is sited below the top of the adjacent parapet roof the flue itself will not be visible from Liverpool Terrace/Gardens or Alexander Terrace and will not result in harm to the setting of the Grade II* listed Desert Sculptures. This can be secured as a condition of planning permission.

Highways and access

The site is located within the town centre. No car parking exists at the site and the Highway Authority has raised no objection to the proposals in this sustainable location commenting that any material intensification of vehicle movements to and from the site is unlikely.

As mentioned above the evolution of the takeaway deliveries undertaken by third party collection companies, in particular involving mopeds, has led to complaints from town centre residents not only about noise but also illegal parking. There is 'Pay and Display' parking between 9am – 6pm Mon to Sat (except Bank Holidays) within bays along Liverpool Terrace and Alexander Terrace (shared with resident permit parking). There are double yellow lines on both sides of the road where Liverpool Terrace curves into Alexander Terrace at the southern end of Liverpool Gardens. The solution lies in the effective management of existing parking controls and it is understood additional controls by parking enforcement officers have been put in place. In the absence of any highway objection there is no grounds to justify refusal on highway safety grounds.

Recommendation

APPROVE Subject to Conditions:-

1. Permission relates to approved plans
2. Standard time limit
3. Extract/ventilation system, including noise abatement, implemented in accordance with submitted Noise report and recommendations. installed prior to use commencing
4. At no time shall any part of the extraction flue outlet/terminus on the roof, including any associated cowl, be taller than or project above the top of the adjacent parapet wall of the Montague Centre.
5. The hours of operation shall be restricted to between 09:00hrs and 23.00hrs on Mon-Fri, 09.00hrs and 24.00hrs (Midnight) on Saturdays and between 09.00hrs and 22.00hrs on Sundays
6. Deliveries/servicing shall not take place except between 07:00hrs and 21:00hrs Monday to Saturday and between 10:00hrs and 18:00hrs on Sunday.
7. Operation of plant and equipment in connection with the proposed use shall be limited to the hours of operation as specified in condition 5.
8. No bottles shall be placed into any outside receptacles after 21.00 hours or before 07:00 hours.
9. Prior to commencement of the use a Management Plan detailing measures (including collection procedures and operational

protocols) to manage delivery collections from the restaurant premises (including delivery collections by third party operators) shall be submitted to and approved in writing by the LPA. The agreed Management Plan shall be operated at all times the premises is open for business.

Informative:

1. Pro-Active Amendment
2. Food Safety team
3. Southern Water

Is recommendation contrary to letter(s) of representation? **Y**

Case Officer: Jo Morin Date: 04.09.2023

Authorised by: Gary Peck Date: 4 September 2023