Exp 13/11

Development Control – Delegated Officer Report

Application Number: ADC/0459/08 Recommendation - APPROVE

Site: **90 High Street, Shoreham-by-Sea BN43 5DB**

Proposal: **Change of use from Class A3 (restaurant) to mixed use Classes A3 (restaurant) and A5 (takeaway)**

The Application

The application premises comprise a small restaurant (81sqm) located on the north side of the High Street, opposite the Ropetackle roundabout. The site is currently vacant following the closure of a 'Café Med Bistro Bar'. Adjoining to the east is a 'Lazy Toad' freehouse whilst to the west is a flower shop on the end-of-terrace.

An application to change the use from a shop to a fish restaurant with take-away was originally refused in 1984, as a result of a highways objection from WSCC, and an appeal was dismissed (SU/49/84).
However, a subsequent application SU/58/86 for change of use from a shop to a restaurant was permitted but with a condition prohibiting takeaway use. An application to remove this condition was refused under SU/77/04/TP for reason that:-
'The proposal would be likely to result in standing vehicles on the highway which would interrupt the free flow of traffic at the intersection of the A259 and the A283 and add unacceptably to the hazards of highway users, contrary to policies AT12 of the Adur District Local Plan, T14 of the approved West Sussex Structure Plan and DEV4-5 of the Proposed Modified Structure Plan 2001-2016'

Permission is again now sought for a change of use from its current A3 (restaurant) to a mixed use A3 (restaurant) and A5 (takeaway), being a proposed Fish and Chip restaurant with takeaway facility.

Consultations and Representations

West Sussex County Council: No objection, notwithstanding the previous refusals of takeaway use and the dismissal of the appeal in 1984, concluding that, after consideration of recent planning and appeal decisions at and near the site, it would be difficult to sustain a highway reason for refusal.

Adur District Council: The Environmental Health Officer has no objection in principle but cooking odours were noted during the site visit and a condition is recommended requiring details of the kitchen exhaust system be approved in writing prior to the change of use being implemented. These details should contain evidence that the exhaust system meets the minimum odour and noise controls set out in DEFRA guidance.

Third Parties: 3 letters have been received.

No.88a High Street raise objection on grounds that the area outside the unit will become even more congested with delivery vans causing obstruction to both road and pavement users. There is already discomfort from cooking smells, but none that have a lingering effect like that of fish and chips. Their offices will constantly smell if this application is approved.

No.90a High Street raise objection on the grounds of increased odour nuisance from the cooking and storage of fish. The extractor units as current are sited outside their flat and point towards it whilst the grease associated with the use will clog an existing drain at the bottom of their entrance. The takeaway use will promote the site as a late night stopping off point causing additional noise disturbance and litter problems. Further objection is raised on the grounds that there is insufficient parking in the area to cater for takeaway traffic.

The freeholder of No.92 High Street raises no objection per se but does raise concern over the management of the extraction and filtration of cooking odours emanating from the premises. A robust system is required to prevent the lingering effect of these odours impacting on the neighbouring shops and flats, particularly with the proposed bi-folding front doors. Extra rubbish bins are requested to serve the extra packaging generated by a takeaway business.

Relevant Planning Policies and Guidance

Adopted West Sussex Structure Plan 2001-16 (WSCC 2004): LOC1, CH4, DEV1, DEV4-5
Adopted Adur District Local Plan 1993-2006 (ADC 1996): AG1, AB3-4, AB14, AS1
PPS1 ' Delivering Sustainable Development' (ODPM 2005)
PPS6 ' Planning for Town Centres' (ODPM 2005)
PPG13 'Transport' (DTLR 2001)
PPG24 'Planning and Noise' (DoE 1994)

Planning Assessment

Policies

The premises are within Shoreham Conservation Area and town centre where Local Plan policy AS1 specifically applies. AS1 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 (NB. the Use Classes Order was significantly amended in 2005 and was subdivided so that Class A3 is now 'restaurants and cafes', Class A4 is 'drinking establishments' and Class A5 is 'hot food takeaways'). Policy AB14 states that every opportunity will be taken to maintain and enhance the

economic vitality of town centres and new shopping development will be encouraged but must be sympathetic to the location.
PPS6 'Planning for Town Centres' stresses the Government's objectives of promoting vital and viable town centres and states that development should be focussed in existing centres in order to strengthen, and where appropriate, regenerate them. Local Authorities should still take into account local issues and material considerations when assessing planning applications and these may include physical regeneration, employment, economic growth and social inclusion. PPG24 (Annex 3, para 20) however states that fast food activity often peaks a late hours and the attendant problems of noise made by customers in the vicinity should not be underestimated.

Principle of Change of Use

Owing to policy AS1, there is no objection to the principle of A3-A5 uses in the High Street. There are a number of recent A5 approvals in the immediate area including those at No's 69, 72, and 114. This application will combine the takeaway use with an all-day restaurant facility such that there will be minimal impact on the streetscene as the premises will remain open throughout the day (avoiding the closed frontages of regular A5 units). There will thus be no impact on the vitality of the Town Centre.

Residential amenity

The surrounding business and residential units have raised concern over the impact of noise and odour on their amenity, particularly by the storage and cooking of fish products at the premises. It must be noted that the site already has A3 use and so therefore can operate as a fish and chip restaurant without requiring the LPA's consent. The addition of the A5 use does though allow an element of control over the odour via this application. The Council's Environmental Health Officer refers to cooking odours having been evident at the rear of the premises and recommends a condition requiring details of the kitchen exhaust system be submitted to and approved in writing by the LPA prior to the change of use occurring. This system should meet the requirements of the DEFRA guidance 'Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems' which covers the effect of extract systems on their surrounding environment. This would address the concerns of the neighbouring residential properties regarding noise and odour from the extract system. As the majority of the cooking and storage of fish is shown to be at the rear of the premises, it is not considered that there will be significant odour to the front that would impact on the viability of the neighbouring flower shop. In any case, the plans for the shopfront (ADC/0458/08) have been amended to remove the bi-folding doors across the entire frontage. Twin doors central to the frontage are now proposed which will reduce risk of odour.

With regard to noise from late night takeaway use, including in the street outside, it is not considered that this will be significantly above and beyond the levels that already exist along the busy High Street. The applicants have stated an intention to shut at 10pm but it has been the Council's practice in

the High Street (following guidance adopted in 1985) to impose conditions with an 11pm closing time (giving till 11.30pm for all activity to cease) and it is considered that this should apply in the present case also.

Parking and Access

WSCC Highways raise no objection to the present application notwithstanding their previous opposition as long ago as 1984 (and again in 2004) to an almost identical proposal for these same premises involving part takeway use and the dismissal of an appeal (SU/49/84). The Inspector concluded:-

"I see no reason to disagree with the views expressed by the Highway Authority ...that experience shows that customers for the takeaway food trade are not prepared to park anywhere but in the immediate vicinity of the shop in question. In this case I am satisfied that, even though much of the takeaway food trade might occur outside normal shopping hours at times when the traffic flow might be reduced, nevertheless the location of the appeal site at the junction of 2 primary traffic routes would be likely to result in unacceptable interference with the free flow of traffic on this part of High Street."

The location of the premises (directly on the roundabout junction of the A259 and A283) gives rise to continuing concern that some customers would park directly outside, to the detriment of highway safety and the free flow of traffic. However, in the light of current policies, the High Street itself is a highly sustainable location easily reached on foot and by public transport. Although the very nature of a takeaway results in some localised temporary parking, it is considered that the existence of double yellow lines and the diluted nature of this takeaway service (as it is in conjunction with a restaurant open all day and in a town centre site that is within walking distance of numerous properties) means that the number of cars stopping is unlikely to be great.

There are a number of lay-by parking bays to the east along with side roads within which takeaway customers could park. This is in addition to an unofficial parking area to the rear/west. When compared to No.114 (takeaway use approved under SU/30/04), there are more potential spaces close by to the applicant's premises. WSCC had no highway objection to No.114 mainly as a result of the overturning on appeal of a refusal on highway grounds of a takeaway at No.69 High Street which was fronted by double yellow lines and a bus stop, on the grounds that it "would not harm the safe and free flow of traffic on the High Street and would not conflict with the development plan" (SU/161/02). Following this appeal though, the relaxation of a condition restricting takeaway use at the present site was refused on highway grounds under SU/77/04, with concerns again over the temporary stopping of vehicles outside the premises impacting on highway safety.

WSSC Highways have considered the present application in light of this refusal, the appeal decisions, the other takeaway uses recently approved and the current parking arrangements in the High Street area, and concluded it is "difficult to sustain a highway reason for refusal". Consequently, refusal on

grounds of detriment to highway safety is considered to be no longer warranted.

Recommendation

APPROVE for reason that:-

The proposed mixed use can take place without resulting in unacceptable detriment to highway safety, the amenities of nearby properties, the character of the Conservation Area and the vitality and viability of the shopping centre. It would consequently not conflict with the relevant policies of the Adur District Local Plan (AG1, AB3-4, AB14, AS1) and the adopted West Sussex Structure Plan 2001-16 (LOC1, CH4, DEV1, DEV4-5).

Subject to:-

1. C1Ci
2. C14L ....8.30pm and 11pm and ....cease by 11.30pm daily.
3. C14O
4. C18K The takeaway use shall not take place until the associated facilities for storing refuse and waste....

Case Officer:..... Date: 30/10/07 PB 31/10/08

Planning Services Manager:..... Date: 31/10/08

Development Control Committee Chairman. Cllr. Angie Mills Date: 10/11/08