exp 17/11

Development Control – Delegated Officer Report

Application Number: ADC/0376/09 Recommendation - REFUSE

Site: **72 High Street, Shoreham-by-Sea BN43 5DB**

Proposal: **Extension of opening hours from 9am-11pm to 24 hours per day (removal of condition 3 of SU/204/94 and condition 1 of SU/71/98)**

The Application

The original permission (SU/204/94) for use of this small shop as a restaurant is subject to a condition stating:-

> "3. The premises shall not be open for trade or business other than between the hours of 9am and 11pm and there shall be no external illumination outside these specified hours."

Subsequently, condition 4 (which prohibited take-away sales) was relaxed to enable home deliveries and then removed altogether (SU/71/98), condition 1 of that permission repeating the hours limitation quoted above.

An application for relaxation of the conditions of the above permissions to extend opening hours to 2.30am Fri-Sat and 12 midnight Sun-Thurs was refused in 2000 (SU/85/00).

The present application is to remove the hours of opening condition entirely, to enable 24 hour opening.

Consultations and Representations

Adur District Council: The EHO objects, commenting that there is potential for the premises to become a focal point for people leaving public houses late at night which may cause disturbance to nearby residential property, especially after midnight when background noise has subsided.

Adur District Conservation Advisory Group: Object to such long hours.

Third Parties: 6 letters/emails of objection have been received from residents of flats 5 & 7 Britannia House, No's 4, 7 & 37 West Street and 72B High Street, and from the restaurant at 74/76 High Street.

The resident of flat 5 Britannia House, on the opposite side of the road, states these premises are the singular major and most frequent source of late-night disturbance and anti-social behaviour in the High Street and that they already stay open until as late as 2.30am on Fri-Sat in the summer – rowdy drunk clientele from public houses and bars such as the Crown & Anchor head for these premises (which have no security aides or make any attempt to curb the behaviour of their customers) and congregate or sit on chairs outside, being

loud, boisterous, occasionally violent and abusive to each other, and sometimes vandalising street furniture and shrubs, or urinating in the street. The resident of flat 7 states there would be noise, disturbance, traffic and smells round the clock and that the type of business, selling take-away pizzas, kebabs and burgers, means the disturbance could be particularly bad at weekends when local pubs do not disgorge their potentially hungry (and drunk) customers onto the street until 1am.

The resident above the neighbouring shop 72B to the east states that she already suffers a considerable amount of noise from the public congregating outside the premises until late at night and wishes the added noise and disturbance the proposal would cause to her bedrooms (at the front) to be taken into account. She also refers to problems of overflowing rubbish bins at the rear obstructing access to her door.

The Indian Cottage restaurant, to the west, has concerns about disturbances caused by late night drinkers which may damage their building (listed) as well as adding to existing problems of noise and litter.

The residents of No's 4 and 37 West Street express concern that extending opening after midnight will increase noise and pollution problems for residents, causing it to become a collecting point for groups of people after the pubs have closed late at night when it is otherwise quiet.

Relevant Planning Policies and Guidance

Adopted Adur District Local Plan 1993-2006 (ADC 1996) (saved policies): AG1, AS1
PPS 1 'Delivering Sustainable Development' (ODPM 2005)
PPS6 'Planning for Town Centres' (ODPM 2005)
PPG24 'Planning and Noise' (DOE 1994)
Circular 11/95: 'The Use of Conditions in Planning Permissions' (DoE 1995)

Planning Assessment

Policies

The site is within the main High Street shopping area and is specifically subject to policy AS1 of the Local Plan. This states that shopping and food & drink uses will be permitted "subject to no loss of amenity to nearby residents".

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 residential amenity

There are a significant number of public houses, restaurants and takeaways in this street, with a variety of opening hours, some pre-dating planning control. Following the adoption in 1985 of ADC's supplementary planning guidance "Late Night Opening of Restaurants and Take-aways", it became the practice in Adur to require closing of take-aways in predominantly commercial streets at 11pm, and 10.30pm in more residential areas. It allowed for the possibility of later opening of takeaways only in isolated cases on a temporary basis depending on the proximity of residential properties.

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.

Whilst the present site itself is within a mainly commercial street, there are a substantial number of flats. These include flats above the groundfloor shops and business premises, including directly adjacent to the premises. There is a large block on the opposite side of the street, with flats at first and second floor levels. There are houses to the rear in West Street. All are in relatively close proximity.

Past experience has shown that late opening has often resulted in unacceptable noise and disturbance from persons, including intoxicated youths, attracted to and congregating at take-away premises such as this and behaving rowdily and noisily. Residents have a reasonable expectation to be able to sleep after 11pm free from disturbance. Apart from the behaviour of the customers themselves, noise would also arise from customers' vehicles stopping in the vicinity of the premises, including from doors slamming. This would be much more noticeable at night because the background noise level diminishes greatly as a result of the small amount of traffic on the A259 at night. Opening of these premises until 12 midnight Sun-Thurs and 2.30am Fri-Sat has previously been refused. Unrestricted opening, 24 hours per day, as now proposed, is considered wholly unacceptable because of the likelihood of severe detriment to the living conditions of the nearby residents.

Recommendation

REFUSE for reason that:-

1. The proposed unrestricted opening is likely to result in unacceptable noise and disturbance at night to the occupiers of residential accommodation situated in close proximity to the site. It would thereby be seriously detrimental to the residential amenities of the locality and contrary to the requirements of policies AG1 and AS1 of the Adur District Local Plan.

Case Officer... [redacted]

Date... 28/10/09.....