Application Number: ADC/0408/09 Recommendation – Temporary permission

Site: 132 Beach Green, Shoreham-by-Sea BN43 5YA

Proposal: Change of use from shop (Class A1) to hot food take-away and cafe (Classes A3 and A5) (opening hours 7am-10pm)

The Application

This is a revised application following a previous refusal for use as a cafe in September 2008 (ADC/0344/08) on grounds that:-

1. *The application does not include adequate proposals for the discharge of cooking odour from the proposed café and in the absence of such details the LPA is not satisfied that the proposed use would not cause unacceptable detriment to the residential amenities of the flats.*
2. *The provision of an odour extract duct on the external walls of the building to address the above objection would be likely to result in unacceptable harm to the appearance of the building and to the visual amenities of the locality.*

The premises lie within a short parade of shops/commercial units on the ground floor of two attached three-storey blocks of flats comprising Princes Court. The double unit which is the subject of the application is currently unused but has been fitted out. It was previously a newsagents with Post Office. To the east is the entrance door/stairs to the flats above, with 2 other units beyond (a pet-grooming shop and a sign/printing shop). To the west are 2 further shop units (a hairdressers and Beach Green Stores) located in the attached building which is set much further back from the road. To the rear (north) are garage blocks for the flats and commercial units. Beyond is the Total petrol station and shop, whilst further west is the Royal Coach public house. The surrounding land use is otherwise residential with blocks of flats to the south and west and mainly houses to the east.

The present application is to change the use from a shop (A1) to a hot food take-away (A5) with café (A3). A floor plan has been submitted which shows tables and chairs to the front of the unit with a counter to the rear with a separate kitchen and WC to the rear. No external changes are shown; the shopfront will remain as existing. The proposed use is stated to consist of cold take-away foods (such as sandwiches and fruit) and hot takeaway food comprising beefburgers, hot dogs and pizzas, plus tea, coffee and ice cream. The proposed cooking is stated to be by means of a ventless fryer and a ventless microwave/convection oven which do not require any external extraction.The rear windows are stated to be openable, as required by H & S guidelines, to enable air into the kitchen area.

The operator of the business states:-

"To clarify my previous statements, regeneration of precooked foods would be done in the air convection oven, this primarily covers all the foods normally deep fried ie. we air fry the foods using only the oil factor on the product, thereby reducing the oil content by about 40% creating a healthier end product for the customer, these items would be purchased from a foodservice wholesaler such as ..... fully cooked or oven ready.
The Turbo Chef is a "Speed cooking oven" capable of cooking raw meats & proteins, raw dough products, frozen potato products, pizza, cookies & muffins etc,.
This unit would be used primarily for our burgers and pizzas, yes we do make our own burgers on site, using meats and other ingredients ..... this way I know whats in them, I can assure you there are no "nasties" a very healthy product, I may say.
We have been to the Turbo chef distributors test kitchen with our burgers & pizzas and were well pleased with the results, this was over a year ago before I started this current project. I would not have proceeded if I had doubts about the quality of the finished products that we intended to offer the customer, or the capability of the equipment.....
We do have a purpose built office here which could be converted to more prep room if the volume of business is such that we need more space."

Consultations and Representations

West Sussex County Council: No objection, commenting that the proposal is unlikely to lead to an increase in vehicle movements to the point where a highway safety issue would arise.

Adur District Council: The Environmental Health Officer states that he is concerned about the proposed ventless fryer and a ventless microwave/ convection oven as there is little or no information available on odour impacts apart from the manufacturer's sales literature. It does not accord with the only official guidance available, namely the Control of Odour and Noise from Commercial Kitchen Exhausts Systems produced by DEFRA. This indicates that for the type of food the applicant proposes, a high level of odour control is needed and an odour extract discharge should be provided above roof level (unless an exceptionally high level of odour control were incorporated but this would be very expensive). Without such provision, there may be potential odour nuisance to neighbouring residents. In addition, general advice on kitchen hygiene and health & safety is that the kitchen needs to have some form of ventilation whether by vents or openable windows to provide a degree of temperature control for workers and food. The applicant only states an intention to cook or reheat certain types of food and only using the proposed ventless fryer and oven but this would be difficult to control through planning conditions and may change over time. There is also concern about setting a precedent if no extract system is provided.
Customer noise requires appropriate limitation of opening hours.

Third Parties: 7 letters have been received. These are from residents of flats No's 25, 26 & 29 Kings Court; No's 2 & 5 Princes Court and No.4/120 Beach Green plus a resident elsewhere on Shoreham Beach and from a neighbouring shopkeeper (No.134). The latter has no objection but expresses some concern about vandalism (which may mean that they would need window shutters) and requests closing by 10pm at the very latest.

The 6 letters from residents object or express concerns that the proposal would:-

- attract more traffic to a location where there is already insufficient parking, aggravating existing problem of parking on pavements/grass verge and obstructing accesses;
- increase chances of accidents on a very busy and dangerous corner where drivers travel too fast;
- cause detriment from smell and noise to flats that are extremely close, with Flat 2 Princes Court having its bedroom and sittingroom directly above; if permitted extreme care should be taken to ensure no smells are emitted
- noise to nearby residents in an otherwise quiet residential area, including from car doors slamming, voices late at night, adding to noise from people leaving the nearby public house.
- fear of gangs of youths congregating, with increased noise and some vandalism.
- opening hours should be reduced to 9am-7pm in order to avoid early morning congestion and take account of residential surroundings, although one letter states 10pm is acceptable as long as it is enforced.
- lessee has already fitted out the premises
- litter of packaging and unwanted food would attract rats
- blocking of drains with waste fat, etc
- Similar proposal previously refused.
- unnecessary as there are sufficient cafes/takeaways already in the area at Ferry Road and The Broadway, Lancing

[NB. the resident of Flat 5 Princes Court requests to speak at the Committee meeting]

Relevant Planning Policies and Guidance

Adopted Adur District Local Plan 1993-2006 (ADC 1996) (saved policies): AG1, AS5
PPS1 'Delivering Sustainable Development' (ODPM 2005)
PPG24 'Planning and Noise' (DoE 1994)
'Guidance on the Control of Odour & Noise from Commercial Kitchen Exhaust Systems' (DEFRA Jan 2005)

Planning Assessment

Policies

The site is located within a small neighbourhood shopping parade serving the west part of Shoreham Beach. Policy AS5 of the Local Plan states that permission will not normally be granted for changes to non-retail use at ground floor level; proposals for non-retail uses will be treated on their merits and will be assessed in relation to the need for the proposed use compared to retail use of the particular premises concerned.

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.

Principle of Development

Although not an A1 use, the proposed use as a takeaway with cafe is a type of retail service and is considered to be acceptable in principle. There are other A1 uses within this parade of shops and the proposal could help to maintain the viability of the parade.

The other main concerns are the effects on the residential amenities of the locality especially the flats directly above from cooking smells and noise disturbance, and on highway safety.

Residential Amenity - noise

As regards noise from customers and activity, the main concern is in the evening period when background noise levels are lower. Disturbance from a takeaway is normally considerably greater than with a restaurant owing to the greater frequency of customers arriving and departing. However, it is considered that the impact on nearby residential properties can be kept to an acceptable level if the opening hours are restricted to prevent early morning and late evening opening when background noise levels are much lower.

A requirement to open at no earlier than 8am and to close to customers at 10pm is considered justified and has been accepted at other neighbourhood parades with flats above. It is considered that the applicant's proposed opening at 7am would be liable to cause disturbance to residents above.

Residential Amenity - odour

It is evident that the issue of cooking odour is a difficult one to resolve in this particular case and it is an important issue because of the residential flats in this block which are in very close proximity.

The applicant states that the proposed cooking of beefburgers and hot dogs would be by means of a ventless fryer and the ventless microwave/convection oven would be used for regenerating pre-cooked foods. He points out that these do not require any external extraction, utilising an American self-contained greaseless frying system and a convection oven designed to use air to heat pre-cooked food.

The Environmental Health officer is concerned that there is little independent information available in this country on the use of such systems and whether they result in odour problems to neighbouring properties. DEFRA guidance does not refer to them and advises for cooking food of this type that an odour extract system should normally be required to discharge above the roof level of the building concerned, preferably above the ridge height or at least 1m above eaves (unless it is of a very high standard, such as a UV system, but this would almost certainly be prohibitively expensive). In addition, if rear

windows are openable, as stated to be required by H & S guidelines to enable air into the kitchen area, this could allow odour to escape.

Provision of an external extract duct to roof level is very unlikely to be acceptable visually on this block of flats (and it may be infeasible in any case because the flats above are in separate ownership).

Given the difficulty of being unable to disprove the efficacy of the proposed ventless fryer and ventless microwave/convection oven were the application to be refused and an appeal arise, it is considered that this may be an appropriate case for a temporary permission to provide a trial period. Such a trial period would need to be short, to ensure that residents are not exposed to significant odour problems and it is considered a 12 month period would be appropriate.

Access and parking

Local residents have expressed concerns that the proposal would attract more traffic to a location where there is already insufficient parking, aggravating existing problem of parking on pavements and obstructing accesses, and increase the chances of accidents on a corner where drivers travel too fast.

However, whilst noting these views, the proposal is unlikely to generate more traffic than the previous use as a newsagents/post office and it would be very difficult to substantiate refusal. WSCC, as the local highway authority have no objection, commenting that the proposal is unlikely to lead to an increase in vehicle movements to the point where a highway safety issue would arise.

Recommendation

APPROVE for the reason:-

The proposal would not harm the vitality and viability of this neighbourhood shopping parade but, because of the potential for odour problems to be caused that would adversely affect the residential amenities of nearby flats, it is necessary only to grant a temporary permission to provide a trial period and retain planning control, having regard to the relevant policies of the Adur District Local Plan (AG1, AS5).

Subject to:-

1. C1Dii (Temporary permission expiring 31 January 2011)
2. C14L (Business hours and external illumination limited to 8am-10pm with all activity ceasing by 10.30pm) (amended)
3. Cooking, regeneration and re-heating of food shall be solely by means of a single ventless fryer and a single ventless microwave/convection oven and by no other means without the prior written approval of the LPA.

4. No air extraction or air conditioning shall be installed at the premises unless in accordance with details which have first been submitted to and approved in writing by the LPA.

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