

10/06/2015

APPLICATIONS RECOMMENDED FOR DECISION

CHANDLER'S FORD & HILTINGBURY Wednesday 10 June 2015
Huckfield

Case Officer David

SITE: **46 Hiltingbury Road, Chandler's Ford, Eastleigh, SO53
5SS**

Ref. F/14/75742 Received: 30/12/2014 (27/03/2015)

APPLICANT: Mr Saidur Rahman

PROPOSAL: **Change of use from A1 retail to A5 hot food takeaway
and installation of extraction unit and ducting**

AMENDMENTS:
RECOMMENDATION:

REFUSE PLANNING PERMISSION

CONDITIONS AND REASONS:

- (1) The proposals would result in an increase of non-A1 uses over and above the 35 percent limit allowed by Saved Policy 139.TC of the Eastleigh Borough Local Plan Review 2001-2011 within the designated Hiltingbury Road (Eastern End) Neighbourhood Parade, and would have a detrimental impact upon the character, viability and vitality of this designated local shopping centre, in conflict with the aims of this Saved Policy, as well as Policy DM20 of the Submitted Eastleigh Borough Local Plan 2011-2029 and Paragraph 23 of the National Planning Policy Framework.
- (2) Based on the limited information available, the proposals are considered to fail to provide appropriate odour neutralising and noise control measures which will result in a harmful and detrimental impact to the amenity of the occupiers of nearby residential properties and neighbouring uses. The application is therefore contrary to Saved Policy 142.TC of the Eastleigh Borough Local Plan Review 2001-2011 and Policy DM1 of the Submitted Eastleigh Borough Local Plan 2011-2029.

- (3) The proposals owing to the nature of the use proposed and its hours of operation will have a detrimental impact upon the amenity and living conditions of neighbouring residents with particular regard to odours, noise and disturbance. The application is therefore contrary to Saved Policies 59.BE and 142.TC of the Eastleigh Borough Local Plan Review 2001-2011, Policy DM1 of the Submitted Eastleigh Borough Local Plan 2011-2029, as well as Paragraph 17 of the National Planning Policy Framework.

Note to Applicant: The application was refused following the consideration of the following plans: HR1214-PL01 Rev C, HR1214-PL02 Rev B, HR1214-PL03 Rev B, HR1214-PL04 Rev B.

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework, Eastleigh Borough Council takes a positive approach to the handling of development proposals so as to achieve, whenever possible, a positive outcome and to ensure all proposals are dealt with in a timely manner.

Report:

This application has been referred to Committee by Cllrs Atkinson, Hughes, Olson and Grajewski and because it is deemed to be of a controversial nature.

Description of application

1. The application seeks approval for the change of use of the ground floor of the premises from retail (A1 use) to a hot-food takeaway (A5 use), to include the installation of an extraction unit and ducting to the rear. The internal layout drawings submitted show a reception / collection waiting area with a serving counter to the front, a food preparation area in the central section, with a staff washing area, store and WC to the rear. The proposed opening hours of the hot food takeaway are 1700 to 2330 Monday to Saturday and 1700 to 2300 on Sundays and Bank Holidays.

Site Area

2. The gross floor space of the ground floor of the building is 42sqm.

The site and its surroundings

3. The application site comprises a ground floor retail unit situated within one of the two-storey buildings which make up the Hiltingbury Road (Eastern End) Neighbourhood Parade as designated within the Council's adopted Local Plan. The neighbourhood parade comprises a mixture of commercial uses including retail stores, accountants and insurance broker's offices, a

café, wine merchants, as well as a beauty salon and chiropractors.

4. The upper floors of the buildings within the parade have largely been converted to commercial and office uses including that directly above No. 46. It is understood that there does however remain some residential occupation, including above No. 36 (Hiltingbury Wines) as well as part of the Picture Framing Shop which occupies No. 56-66. The parade is served by a parking area across its frontage which is accessed from Hiltingbury Road.
5. No. 46 is currently the only vacant ground floor unit within the Parade. The Council's 'Town Centres, Local Centres & Shopping Parades – Details of Occupancy Background Paper' shows that the premises has most recently been used as a convenience store (Hasta) prior to which it had been occupied by a clothing retailer (Jeeves), both A1 uses. The unit occupies a central position within its block with the majority of its internal area currently being formed of tradable floor space. There is a small kitchen, WC and store at the back of this with access out into the service area to the rear.

Relevant planning history

- A/09733/001: Erection of illuminated fascia sign – CONSENT TO ADVERT DISPLAY (12/10/1987)
- Z/09733/002: Change of use from shop to tea room – PERMIT (13/04/1992)
- Z/09733/003: Relief from conditions 3 and 6 of planning permission 9733/2 for change of use from shop to tea room – PERMIT (17/07/1992)

Representations received

6. A total of 38 letters of representation have been received in relation to the application. These raise objections to the proposals on the following grounds:
 - An adverse effect on neighbouring amenity through smells, noise and disturbance.
 - Generation of litter, waste disposal issues, and potential attraction of vermin.
 - Potential for anti-social behaviour.
 - Impact on the character of the area and the adjacent Hiltingbury Lakes.
 - The proposals being unnecessary with other takeaways available elsewhere in Chandlers Ford and other vacant units available elsewhere.
 - Devaluation of property in the area.

- The proposals would set a precedent for other takeaway uses in the area.
- Increase in traffic and parking issues in a residential area.
- No improvement to vitality and viability of the shopping parade.

Consultation responses

7. **The Head of Environmental Health** – objection on the grounds that insufficient information has been provided to establish that the applicant will prevent significant pollution impacts from noise and odour arising or that emissions of such will be minimised.

Odours from the preparation of the food types proposed here are recognised as having a high odour potential. Whilst generic information has been provided for a filtration system for grease removal and carbon filters for odour, it has not been demonstrated that this would be sufficient to reduce odours to the point that odours are minimised and loss of amenity to local residents and businesses prevented. It should also be borne in mind that from any appropriately designed and properly operated filtration system there will be residual odours noticeable from time to time.

The information provided by the applicant refers to the installation of an extract fan (with silencer), to extract cooking odours and vapours from the kitchen. Whilst the silencer will reduce noise from the system, no objective assessment of the residual noise has been carried out to furnish us with the information we require establish if it would be reduced to acceptable levels.

We also understand that the local businesses in the vicinity are different in character to this proposal, not least of which in the pattern of usage. Those businesses operate during the day whilst this operation will be busiest in the evenings. There is a potential for disturbance to occur to local residential users from vehicles arriving and departing the site into the evening. We are not aware that the applicant has provided information on the potential for impacts from these activities nor how they will be effectively managed to prevent unacceptable noise impacts arising.

8. **The Head of Transportation and Engineering** - no objection. In regard to parking, site observations over several years (for previous applications on the parade) have shown there to be spare capacity to some extent throughout the day, with relatively high turnover. There are in excess of 30 parking spaces for parade users, and in the evening periods, when the takeaway would be at its highest use level, looking at existing retail units (whilst this could be subject to change) there is only one – Wine Shak – that is likely to be open. As such, it would not be anticipated that there would be any issue in regard to parking availability for users of the take-away.

The application is for a change of use from A1 retail to A5 take away. As such, the TRICS database (national database of traffic flows associated to

specific development types) was reviewed, and it has been found that an A1 retail use is anticipated to generate more multimodal trips than the proposed A5 takeaway. This will result in a reduction in overall multimodal trip rates on the highway if the application proceeds. As such, in line with the Hampshire County Council Transport Contributions Policy, there will be no requirement for planning obligations to be paid.

9. **Chandlers Ford Parish Council** – no comments received.

Policy context: designation applicable to site

- Within Built-Up Area Boundary
- Within Designated Shopping Area – Hiltingbury Road East
- Existing A1 Retail Premises

Development plan saved policies, emerging local plan policies and SPD's

- Eastleigh Borough Local Plan Review 2001-2011, Saved Policies 59.BE, 104.T, 139.TC, 140.TC, 142.TC
- Submitted Eastleigh Borough Local Plan 2011-2029, July 2014 Policies: DM1, DM20, DM24 (The Submitted Local Plan comprises: the Revised Pre-submission Eastleigh Borough Local Plan 2011 - 2029, published February 2014; and the Schedule of Proposed Minor Changes, submitted to the Secretary of State in July 2014).
- Town Centres, Local Centres & Shopping Parades – Details of Occupancy Background Paper (August 2014).
- Supplementary Planning Document: Planning Obligations

National Planning Policy Framework (NPPF)

10. The NPPF sets out a presumption in favour of sustainable development which lies at the heart of the Framework (Para. 14). It also requires that development does not undermine the quality of life, emphasises the importance of good quality design, the creation of attractive places, as well as the ensuring of a good standard of amenity for existing and future residents (Para. 17).

11. It states that the planning system should support sustainable economic growth (Para. 18), promote competitive town centre environments that provide customer choice and a diverse retail offer and which reflect the individuality of town centres, and recognise town centres as the heart of their communities and pursue policies to support their viability and vitality (Para. 23).

Policy commentary

12. The above policies combine to form the criteria on which this application will be assessed with particular regard to the principle of the proposed change of use, parking and highway safety, and the impact of the

proposals on the vitality, viability and character of the existing designated local shopping parade, as well as the amenity of the occupiers of neighbouring residential properties.

Assessment of proposal: Development plan and / or legislative background

13. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states: “If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”.

Principle

14. The application site falls within the urban edge where the basic principle of development is considered to be acceptable, as well as forming part of an established neighbourhood shopping parade. This being the case, the most relevant policy is Saved Policy 139.TC of the Eastleigh Borough Local Plan Review 2001-2011. This policy aims to protect a choice of day to day shops locally which reflects the Council’s commitment to maintaining a strong core of retail uses in designated centres and neighbourhood parades. This approach is considered to accord with the provisions of Paragraph 23 of the NPPF. The contribution that other uses can make to the vitality and viability of these centres is however recognised and as such Policy 139.TC it allows for a degree of flexibility to accommodate other uses. In this regard, the policy sets a maximum threshold of 35% of the total shopping frontage length of a designated centre for non-A1 uses.
15. No 46 equates to 5.2% of the frontage length within the Hiltingbury Road (Eastern End) Neighbourhood Parade. At the present time and based on the latest occupancy details available, the percentage of non-A1 uses within the parade stands at 32%. If approved, the proposed change of use would result in this being increased to 37.2%, therefore exceeding the 35% limit allowed by Policy 139.TC. In principle terms therefore the proposal is contrary to the adopted policy and is not acceptable.
16. Whilst it can be afforded only very little weight owing to the unadopted status of the of the Plan, Policy DM20 of the Submitted Eastleigh Borough Local Plan 2011-2029 does give an indication of the content of likely replacement policies for 139.TC in future iterations of the Local Plan. Whilst this policy increases the non-A1 threshold from 35 to 40%, this is subject to the requirement that any new use retains an active ground floor frontage and can demonstrate a similar daily footfall to Class A1 use.
17. Also of relevance to this application are Saved Policies 59.BE, 104.T and 142.TC of the Eastleigh Borough Local Plan Review 2001-2011.

18. Saved Policy 59.BE requires development to take full and proper account of the context of the site including the character and appearance of the locality and be appropriate in mass, scale, materials, layout, design and siting. It also requires a satisfactory means of access and layout for vehicles, cyclist and pedestrians, make provision for refuse and cycle storage and avoid unduly impacting on neighbouring uses through overlooking, loss of light, loss of outlook, noise and fumes.
19. Saved Policy 104.T requires the provision of adequate off-highway parking to serve the development up to the maximum standard set out in respect of the accessibility of that development.
20. Saved Policy 142.TC relates specifically to proposals for hot food outlets and states that such application will be permitted where: there are no residential units or other odour-sensitive premises which could be detrimentally affected by the proposals; where provision is made for appropriate odour neutralising and noise control measures; and adequate provision is made for the disposal, storage and collection of waste.

The impact of the proposals on the vitality, viability and character of the neighbourhood parade

21. The application unit is a presently vacant A1 retail premises. The character of the area in which it falls is largely defined by its mixed function of residential and commercial uses that comprise a range of generally modest shops and services set within a designated neighbourhood parade. With the exception of the wine merchants (No. 36) which opens until 9pm, these units predominantly operate during daytime working hours and are closed to the public in the evening giving the parade a rather low-key impact in the locality later in the day. It is considered that the existing mix and balance of the uses in the parade as well as their hours of operation assists in protecting the vitality and viability of the shopping area and contribute positively to the overall character of the locality.
22. The proposals would change the use of No. 46 from A1 retail to an A5 hot food takeaway use. This, as opposed to the vast majority of the units within the parade, would be an exclusively evening use, operating between the hours of 1700 and 2330 Monday to Saturdays and 1700 to 2300 on Sundays and Bank Holidays. Whilst it is accepted that the proposals would bring the currently vacant unit back into a form of occupation and the extraction equipment to the rear would not have a notable impact upon the visible character of the building, the inactivity of the unit's ground floor frontage would continue during daytime hours when the premises would be closed. This inactivity would, as is currently the case with the vacant unit, remain strikingly apparent owing to the prominently central position of the premises in the parade and the otherwise full occupation and daytime uses of its other units.
23. The proposals would also result in the reduction in the possibility of linked trips from the premises to adjoining uses within the parade, owing to the

hot food takeaway centring its business around the evening trade when the vast majority of neighbouring premises are closed. As such and taking account of these factors, it is not considered that the proposals would serve to enhance the vitality and viability of the Hiltingbury Road (Eastern End) Neighbourhood Parade and indeed would be to the detriment of it relative to a conventional A1 occupation.

24. In addition, whilst the premises are evidently currently vacant, this in itself is not considered to be sufficient justification for the loss of the A1 use. Indeed, although there is no confirmation as part of the application as to when exactly the A1 use ceased, the Council's latest available Town Centres, Local Centres & Shopping Parades Details of Occupancy Background Paper shows it to have been occupied for this purpose as recently as August 2014. The previous versions of this document that are available (back until December 2006) show both continued occupation of the unit for A1 purposes as well as a particularly high level of occupancy of the other units in the neighbourhood parade. It is therefore considered that there remains reasonable potential for its occupation for a use within the A1 class and there has been no evidence provided as part of the application to the contrary such as to demonstrate that such demand no longer exists.
25. For the reasons given therefore, the application is considered to be contrary to Saved Policy 139.TC in that it would result in the level of non-A1 frontage length within the Hiltingbury Road (Eastern End) Neighbourhood Parade exceeding the permitted 35% limit. This being something for which there is considered to be no overriding reason or justification to have been provided and which as set out above would result in a detrimental impact to the character and long term vitality and viability of the shopping parade which this Policy seeks to protect and being a general objective that is considered to accord with Paragraph 23 of the National Planning Policy Framework.

Amenity

26. Saved Policy 142.TC relates specifically to proposals for hot food outlets and states that such application will be permitted where: (i) there are no residential units or other odour-sensitive premises which could be detrimentally affected by the proposals; (ii) where provision is made for appropriate odour neutralising and noise control measures; and (iii) adequate provision is made for the disposal, storage and collection of waste. In addition, Saved Policy 59.BE (vii.) sets out that development should avoid unduly impacting on neighbouring uses through overlooking, loss of light, loss of outlook, noise and fumes.
27. Whilst many of the upper floors of the premises within the parade have been converted to commercial and office uses, there remains residential occupation above a proportion of them including at No. 36 which lies at the end of the same block within which No. 46 is situated. There is also understood to be residential occupation above No. 62-66 and there are

further more numerate residential properties in close proximity to the site including detached dwellings and flatted blocks along the opposing side of Hiltingbury Road.

28. Having regard to the proximity of neighbouring residents, it is considered that their occupiers would be adversely affected by odours from the proposed takeaway use. Whilst some form of extraction equipment would be provided, as noted by the Council's Head of Environmental Health, insufficient information has been provided to demonstrate that this would be of a sufficient nature to reduce odours to the point that an unacceptable loss of amenity to local residents and other neighbouring uses could be mitigated. Notwithstanding this, even with extraction equipment being provided, there would still be the likely escape of residual odours from the plant and from the doors and windows of the premises.
29. In addition, whilst some form of silencer is proposed for the extractor fan which forms part of the filtration system, no objective assessment has been provided in respect of the residual noise generated from the system such as to allow for the Council's Head of Environmental Health to be able to assess whether or not this would be reduced to an acceptable level. It is therefore considered that, in the absence of such information, the extraction equipment has the potential to generate unacceptable levels of noise which would be to the detriment of the amenity of the occupiers of neighbouring residential properties.
30. Noise generation and associated disturbance is also a notable concern in relation to the hours of operation of the proposed takeaway business with these resulting in increased impacts in both regards in the evening when the neighbouring retail shops and commercial uses would generally be closed. Whilst it is accepted that the wine store (No. 36) above which the closest residential unit is situated does open until 2100 (as confirmed by the proprietor during the application site visit), the takeaway business would continue until much later in the evening at 2330 on Mondays to Saturdays and 2300 on Sundays and Bank Holidays.
31. As such, the potential noise from vehicles arriving to collect takeaways or from those undertaking deliveries for the business, including from their engines and the slamming of doors, together with the sound of voices late at night, would cause unacceptable disturbance to the nearby residents. This would be particularly apparent to the residents of the upper floor of No. 36 but also to those of the properties in the immediate and nearby vicinity including on the opposing side of Hiltingbury Road. It is considered therefore that the proposed use and its opening hours would have an unacceptable and harmful effect on the living conditions of local residents.
32. In terms of the third criteria of Saved Policy 142.TC, which relates to the requirement for adequate provision to be made for the disposal, storage and collection of refuse, an area for the storage of waste bins is shown on the submitted layout drawings within the service area to the rear of the premises. This area also serves neighbouring uses for a similar purpose

and is such the proposed arrangement would not be considered to be unacceptable nor would it be deemed to be in conflict with the requirements of Saved Policy 142.TC of the adopted Local Plan.

33. For the reasons given above, the application is in conflict with Saved Policies 142.TC (i) and (ii) and 59.BE (vii.) of the Eastleigh Borough Local Plan Review 2001-2011, Policy DM1 of the Submitted Eastleigh Borough Local Plan 2011-2029, and Paragraph 17 of the National Planning Policy Framework, in that it is considered that the proposals would be harmful to the amenity and living conditions of neighbouring residents with particular regard to odours, noise and disturbance.

Parking and highway matters

34. The shopping parade which the application unit forms part of is served by an area of car parking on its frontage which is accessed from Hiltingbury Road. As noted above, the majority of the commercial uses within the parade operate during daytime working hours. The hot food takeaway is by contrast proposed to open at 5pm and as such whilst there will be a limited degree of cross over with neighbouring uses, when the takeaway is at its highest level of operation in the evenings, it is likely that neighbouring units will be closed to the visiting public. As such and as noted by the Council's Head of Environmental Health it is not anticipated that there would be any significant issues in regards to the availability of car parking for users of the take-away.
35. In addition, whilst having different trading patterns to retail uses, the trip rates generated by an A5 use would be no greater than the previous or potential A1 occupation of the premises and therefore it is unlikely that the proposals will generate significant additional traffic in the local area.
36. There is therefore deemed to be no conflict with the requirements of Saved Policies 59.BE and 104.T of the Eastleigh Borough Local Plan Review in this respect.

Planning obligation considerations

37. As noted in the consultation response of the Council's Head of Transportation and Engineering, it is considered that the trip rates generated by an A5 use would be no greater than the previous or potential A1 retail uses of the premises and that it is unlikely to generate significant additional traffic to the local area. It is for these reasons that no sustainable transport contributions have been requested in respect of this planning application. There are no other planning obligation considerations.

Other material considerations

38. Also of relevance is the Submitted Eastleigh Borough Local Plan 2011-2029. While not yet adopted it does carry weight by virtue of being

intended as the current local plan's replacement. With regards to this application, the new policies essentially echo those of the current plan and are not considered to affect the recommendation put forward.

Conclusion

39. For the reasons as set out above, it is concluded that the proposed development would result in an unacceptable loss of a retail unit and would have a detrimental impact upon the character and vitality and viability of the neighbourhood shopping parade which it forms part, as well as being harmful to the amenity and living conditions of neighbouring residents with particular regard to odours, noise and disturbance. As such the proposals are in conflict with the relevant development plan policies, associated supplementary planning guidance and national planning policy. It is therefore recommended that planning permission be refused.



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F/14/75742

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1:1250
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