

Recommendation: **GRANT PERMISSION**

APP/19/01033 - Change of Use of Ground Floor Retail Shop unit (A1) to allow for flexible use of Financial & Professional Services (A2), or Restaurants and Café (A3) or Hot Food Takeaway (A5) use., PERM.23/12/2019

3 Proposal

Change of Use of Ground Floor Retail Shop unit (A1) to allow for flexible use of Financial & Professional Services (A2), or Restaurants and Café (A3) or Hot Food Takeaway (A5), or Assembly & Leisure (D2) (expanded range of uses to those granted planning permission under APP/19/01033).

4 Policy Considerations

National Planning Policy Framework
Havant Borough Council Borough Design Guide SPD December 2011
Havant Borough Council Parking SPD July 2016

Havant Borough Local Plan (Core Strategy) March 2011

CS16 (High Quality Design)
CS4 (
DM10 (Pollution)
DM14 (Car and Cycle Parking on Development (excluding residential))
DM5 (Control of Class A3, A4 and A5 Food, Drink and Entertainment Uses)

Havant Borough Local Plan (Allocations) July 2014

AL1 (Presumption in Favour of Sustainable Development)
AL3 (Town, District and Local Centres)

Havant Borough Pre Submission Local Plan 2036

E22 (Amenity and pollution)
C8* (Food, drink and entertainment uses)
C5* (Mengham District Centre)
IN3 (Transport and parking in new development)

Emsworth Neighbourhood Plan Post Examination Version 2020

N/A

Listed Building Grade: Not applicable.
Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Environmental Health

All comments provided previously on 4 November 2019 under App/19/01033, remain valid for the first four usage classes as above.

With regard to Assembly & leisure (D2) usage, more specifically use as a 'gym', I can advise that I have noise and vibration concerns as follows:

Whilst it is advised that the ceiling over / floor to the flats above is compliant with Part E of the Building regulations, that does not necessarily ensure there will be no adverse noise and vibration impact on the residential receptors above, from both airborne and impact noise from an operational gym.

The applicant has also advised in the Design & access statement, there will be a 43 mm thick specialist rubber covering laid on the ground floor which will help reduce the noise of the gym weights hitting floor. Whilst this may be so, there are no noise readings provided, to show what level of noise reduction can be expected.

Whilst free weights can be noisy in their own right dependent on how they are being

used, I would think a gym could also be likely to have machines with cables, used to lift different quantities of weights; these are sometimes fixed to walls for stability & can cause impact & vibration noise.

Classes, be they spinning, circuits, aerobics and such like, can also be noisy dependent for example on the volume of music being used, or the instructions being shouted by the trainer.

It is advised that there are two only small top hung casement windows for ventilation; I note however these appear to be directly below bedroom windows upstairs. As no air conditioning is envisaged at this time, these windows may be the only source of ventilation especially on warm days and can provide a noise escape point when open. Whilst a gym is currently envisaged under Class D2 usage, this class covers a number of different uses, many of which are potential noise generators. In a worst case scenario, are the noise reduction measures currently in place & being suggested for this unit, sufficient to prevent adverse noise impact on existing residential receptors?

This office will recommend refusal for the approval of this unit for D2 usage, until the applicant can show that the current measures and any additional mitigation measures that may need to be implemented, will ensure no adverse noise & vibration impact on nearby residential receptors.

If the applicant so wishes, he can consider submitting a Noise Management plan, which will remain a live document, and whereby if noise / vibration issues should arise in the future, the applicant / site owner of the day, undertakes to remedy these issues to a level that prevents any adverse noise and / or vibration problems to the residents above and nearby.

Follow up comment after submission of Noise Management Plan

I recently had on-site discussions with the applicant and the potential future commercial tenant of the ground floor premises, in regard to the Class D2 (Assembly & Leisure) addition. I can advise that the revised Noise Management Plan (NMP), drawn up by Airtight Noisecheck and dated the 2nd September 2020, and received today 7-9-2020, refers.

As this document appears to address the concerns initially raised related to potential noise and vibration issues for the residential receptors above and neighbouring this premises, I can advise that with a condition related to the above Noise Management Plan remaining a live document and being adhered to going forward, I withdraw my previous recommendation for refusal of the D2 usage.

I would therefore ask that a condition similar to that below related to the NMP, be added to any positive decision notice, should this application be approved, and in addition the conditions as stipulated in the decision notice as related to App/19/01033 be retained in terms of the other change of use Classes.

Condition 1 – Noise and vibration control:

The noise management plan submitted by the applicant to the Local Planning authority, which specifies the provisions it will make to ensure the control of noise and vibration emanating from the ground floor commercial unit in terms of D2 usage, shall remain a live document and the measures to control noise and vibration advised of there-in, must be adhered to. This document shall be reviewed periodically or as required, to address any issues arising, or which may arise from changes to the operation or usage of the facility.

Reason: To protect the occupants of nearby residential properties from noise & / or vibration emanating from this premises

Planning Policy

The Local Plan (Core Strategy) and the Local Plan (Allocations), together with the Hampshire Minerals and Waste Plan, provide the development plan for the borough. The Pre-submission Havant Borough Local Plan 2036 (HBLP 2036) was approved by the Council on 30 January 2019 and can be afforded limited weight.

The following policies are of relevance:

- CS4 and AL3 – Town, District and Local Centres
- DM5 – Control of Class A3, A4 & A5 Food, Drink and Entertainment Uses
- DM10 – Pollution
- DM14 – Car and Cycle Parking on Development (excluding residential)

In the Pre-submission Plan the following policies are of particular relevance:

- C5 | Mengham District Centre
- C8 | Food, drink and entertainment uses
- E22 | Amenity and pollution
- IN3 | Transport and parking in new development

This application seeks a flexible use of the unit for alternative use classes as the retail unit not been occupied since its completion. Policy DM2 does not apply as this particular case refers to premises yet to have been occupied.

Principle of Development:

Adopted Local Plan

The site is located within the primary frontage of Mengham District Centre as defined by Policies CS4 and AL3. Policy AL3 indicates that at least 50% of the units in an unbroken run of primary frontage (as defined on the Policies Map) should be retained in retail use (A1).

In this particular case, the site lies within the parade of ten shops (Nos. 5-31) on the western side of Elm Grove to the north of its junction with Hollow Lane. The application site is occupied by the only vacant unit, with only three units in A1 use; namely the Post Office, the Hair Advice Centre Ltd and the Village Barbers. As such, the threshold has already been breached as there is currently less than 50% of units in retail A1 use.

Paragraph 2.13 of the supporting text in the Local Plan (Allocations) indicates that *“Shopping has become more of a leisure pursuit and shoppers expect other amenities such as cafes and restaurants which complement the retail offer. As a result, businesses will be encouraged to take up units in primary shopping areas that will contribute positively to the vitality and viability of the centre, even if the proposed use is not retail.”* This is reinforced by Planning Practice Guidance which recognises that complementary uses can help to support the vitality of town centres.

Significantly, paragraph 2.15 also states that: *“It is particularly important to keep vacant units to a minimum in the primary shopping area. It may be more appropriate, therefore, to allow a non-retail use to occupy a unit than for it to remain vacant....”*

Given that the 50% threshold for an unbroken run of primary shopping frontage has already been breached, a policy objection would normally arise.

The submitted Design Statement suggests the approved retail A1 use has been vacant and ready for possession for around a year. In this respect, the supporting text in the Allocations Plan recognises that food and drink uses can help complement the retail offer. It is also noted that ‘Assembly and Leisure’ uses falling within Class D2 are

generally defined as 'Main town centre uses' in the context of Annex 2 in the NPPF.

The applicant has submitted an interim marketing strategy which suggests a third party marketed the site from 2017, and Flude Property Consultants have marketed the site since 17th May 2019. Whilst it is apparent the premises have been marketed for the required length of time (12 months) and some details of the level of interest have been included, there is very limited evidence to substantiate this e.g. photographs of marketing boards. Nevertheless, it is noted the applicant has endeavoured to secure an occupier over a prolonged period of time but without success. It should also be noted that a vacant unit would not contribute to the vitality and viability of the District Centre, and a policy objection could not be sustained on those grounds.

Emerging Local Plan

Policy C5 (Mengham District Centre) of the emerging Local Plan indicates that proposals for uses which are not A1, A2 and/or D1 uses will only be permitted in exceptional circumstances and will need to demonstrate that:

- i. *Through an active and realistic 6-month marketing exercise that there are no other viable A1, A2, or D1 uses which can be accommodated in the unit;*
- ii. *The new use will retain an active ground floor frontage; and*
- iii. *The new use complements the function of the Primary Shopping Area.*

Given that the application description includes the flexible permission including A5 use, policy C8 of the Pre-Submission Local Plan 2036 is of relevance. This policy seeks to restrict A5 uses across the borough to below the current levels in order to support public health objectives. The A5 element would therefore not be supported under emerging policy. However, these policies can only be attributed limited weight.

Changes to the Use Classes Order

The 2020 Use Classes Order revokes Use Classes B1, A1-A5, D1 and D2 and replaces them with two new Use Classes: Class E and Class F.

It is noted that Classes A1, A2, A3 and A5 would all fall within the new Class E, 'business, commercial and service uses' set out under Schedule 2 Part A. The applicant has highlighted that a proposed Class D2 would be occupied as a gym which would also fall under Class E 'for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public.' This should be clarified with the applicant and reflected in the description of development. This reflects the fact that Class E will only include parts of D2.

Noise and Odours

Policies

- DM5 Control of Class A3, A4 and A5 Food, Drink and Entertainment Uses (Core Strategy) and
- C8 Food, Drink and Entertainment Uses (HBLP 2036)

include provisions regarding the management of noise and odour from food, drink and entertainment uses, which will have to be met. Design policies (see below) will also be relevant to the consideration of any such equipment.

Shopfront and Signage

With regard to any changes to the shopfront or signage, the following policies will be relevant considerations:

- CS16 High Quality Design (Core Strategy)
- DM21 Shopfronts, Signs, Security Shutters and Advertisements (Site

- Allocations)
- E1 High Quality Design (HBLP2036)

Conclusion:

The key consideration is whether the proposal supports and enhances the vitality and viability of Mengham District Centre. In particular, it is of relevance to consider whether such a flexible permission would complement the primary shopping area given that already less than 50% of units in the shopping units are in retail use. As such a policy objection would normally arise under adopted policy, but it is noted that this threshold has already been breached. Whilst the applicant has submitted insufficient marketing evidence, it is noted that a flexible permission would help to ensure the unit is occupied and thereby contribute to the vitality and viability of the District Centre.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 18

Number of site notices: 1 - displayed by applicant on front of shop (due to Covid site visit restrictions)

Statutory advertisement: Not applicable.

Number of representations received: 0

Comment	Officer Comment
None received	

7 Planning Considerations

7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Principle of development and Use Classes
- (ii) Compliance with policy
- (iii) Impact upon the character and appearance of the area
- (iv) Impact upon residential amenity
- (v) Parking

- (i) Principle of development and Use Classes

The application site is situated within an urban area where further development is considered acceptable subject to the usual development control criteria. APP/14/01192 permitted the development as constructed on site and condition 3 restricted the ground floor unit to being Class A1 only. However this unit has remained vacant with no suitable A1 user having been found. As a vacant new build it has not yet had a lawful user and therefore currently the ground floor unit does not have a lawful use and the site cannot benefit from any permitted development changes of use.

APP/19/01033 therefore sought a speculative, flexible permission for Financial & Professional Services (A2), or Restaurants and Café (A3) or Hot Food Takeaway (A5) uses to enable wider marketing to find an appropriate user for the site. That application was granted permission on 23/12/2019 and as a result of the more flexible permission and marketing a gym user is now interested in the site. However under the 1987 Use Classes Order a gym falls within Class D2 and hence a further permission is required and this application has been submitted to now include D2 uses as well as those previously permitted. Class D2 includes cinemas, concert halls, casinos, dance halls, gyms and other recreational uses.

It is however noteworthy that during the course of determining this application there has been a reform of the Use Classes Order and the new 2020 Use Classes came into effect on 1 September 2020. This has revoked Class A1/A2/A3 and replaced with new Class E which also includes B1 and some D2 uses - namely gyms and other indoor recreations not involving motorised vehicles or firearms. Relevant to this application is the fact that A5 take aways have become sui generis uses. The other D2 uses eg cinemas, concert halls, bingo halls and dance halls have also become sui generis.

The legislation stipulates that the Uses Classes Order in effect when an application was submitted will be those used to determine the application. Therefore this application must be determined against the 1987 Use Classes Order, but regard must be had to the direction of travel and the fact that Central Government is introducing broader, more flexible uses for town centre sites. The new Class E covers commercial, business and service sectors and under the 2020 Order it would not be development for a shop to become a gym.

Therefore, the inclusion of a gym at this site, that would serve the local population as part of the already approved flexible permission for the site, is supportable in principle. But not all the D2 uses would be appropriate for the site without further consideration (due to sessional nature with large audiences) and it is considered that, in line with the new Class E, the use is limited to gyms and other indoor recreational uses not involving motorised vehicles or firearms, only.

ii) Compliance with policy

In policy terms, the site is located within the Mengham District Centre and within the primary shopping area where adopted policies seek to retain the vitality and viability of these centres to serve the needs of local residents. As such Policy DM2 protects the loss of any premises "currently or last used" for A1 unless it can be demonstrated through marketing that the unit is no longer viable. However, in this instance the unit has not ever been put to any use and hence this policy is not strictly relevant.

Nevertheless the applicant has provided an update to the previous marketing information under APP/19/01033, which indicates that two further viewings have taken place since that permission, and the enquiry for the gym has resulted in this application. The marketing agent notes that since December 2017 two agents have undertaken a marketing campaign on a variety of portals but with no positive take up, despite the owner/applicant being flexible in offering the unit as various sizes and with shorter lease terms, reduced rent and incentives.

The supporting text to both adopted policies CS4 and AL3 notes that local centres lie at the heart of communities and its important to promote vitality and viability. It is also noted that shopping has become more of a leisure pursuit and uses such as cafes and

restaurants compliment the retail offer and that is important to keep vacant units to a minimum in the primary shopping area. A gym use would provide a leisure use for local residents and provide an active use with employment for a unit that has otherwise laid vacant. Future users would be likely to make combined trips, thus supporting the other local units. Given Central Governments direction of travel, it is considered that a more flexible permission would be compliant with the overall aim of policy, despite the loss of an A1 unit.

The policy objection to the A5 use based on the emerging Local Plan is noted, but currently these policies carry limited weight in decision making and this has already been approved under APP/19/01033.

(ii) Impact upon the character and appearance of the area

Being within the District Centre and Primary shopping area it is important that the shop window is retained with an appropriate display by any future occupiers, to retain appropriate levels of visual interest. The submitted details make no changes to the shopfront and it is expected that any future A1, A2, A3, A5 or limited D2 uses would naturally advertise their services and provide visual interest to the street scene.

(iv) Impact upon residential amenity

The site has occupied residential flats above and therefore the introduction of D2 uses at ground floor could have an impact on occupiers amenity from, in particular, noise and vibration from impacts and classes. A gym user has been identified for the site and a Noise Management plan provided which sets out how a gym would operate with specified mitigation.

This document states that the intervening floor has insulation to achieve 63dB which exceeds the recommended minimum in Building Regs; the gym equipment would not be fixed to ceiling or walls (to avoid bounce back vibration) and the floor will be fitted with Combative 30mm rubber matting. It also states that a maximum number of people in a class will be 10, with a maximum of 4 people in the gym at any one time. The space will be ventilated with an internal fresh air conditioning unit, negating the need to have the windows open. Music would be at background level only. The requested hours for the gym would be between 07:00 and 20:00 Monday to Friday; 09:00 and 16:00 Saturdays and 10:00 and 15:00 Sundays, with limited classes within these periods.

Based on these working parameters the Environmental Health officer has withdrawn his previous concerns over the proposed gym use. It is considered that the amenity of the residents above should be sufficiently protected provided the Noise Management Plan is adhered to at all times, including any future change in provider. This can be conditioned. Should any unpredicted statutory noise nuisance occur in the future then Environmental Health have separate legislation to take any necessary action.

This application also repeats the request for A3 or A5 take away uses which have different impacts and potentially on a wider area ie the residential dwellings located to the north and west as well as flats above. This matter was previously considered under APP/19/01033 where the potential for environmental problems from odour, fumes, litter, noise, vibration, air pollution etc was considered against Policy DM5. However both this and the last application are speculative, without the end user known or actual foods to be prepared known. Therefore it is not possible at this stage to assess the adequacy of any extractor equipment, location of any flues etc and these

matters must again be conditioned.

In terms of opening hours of an A5 take away it is noted that the other late night business in the Mengham District Centre are permitted to open until 23.00 Monday to Saturdays and until 22.30 on Sundays (see 02/59734/002 and APP/17/01238). The previous permission APP/19/01033 conditioned the opening hours of the ground floor commercial unit between 08:00 and 23:00 on Mondays to Saturdays and 09:00 and 22:30 on Sundays and bank holidays to match these hours and prevent any further late night nuisance associated with comings and goings, to protect the amenity of nearby residents.

It is considered that the normal business hours of a gym and take away vary sufficiently to warrant two different hours conditions for the separate uses. It could be harmful to have a gym in use as late as 23:00 but a take away would want to operate later than 20:00. So specific hours conditions for the different uses are proposed to provide adequate control in the future.

(v) Parking

The site is located immediately adjacent a public car park and on a main bus route. Therefore both customers and staff would have easy access to the site and the change of uses proposed would be unlikely to result in indiscriminate parking to the detriment of highway amenity.

8 Conclusion

It is considered that the more flexible uses sought, including D2 gym, would be appropriate to the Mengham District Centre, supporting and enhancing its vitality and viability whilst serving the local community. The changing nature of shopping is such that alternative uses can compliment the function of the area and it is considered that it is more beneficial to have the unit in use than vacant. With conditions controlling opening hours and any future extractor and flues, then permission is recommended.

9 **RECOMMENDATION:**

That the Head of Planning be authorised to **GRANT PERMISSION** for application APP/20/00541 subject to the following conditions

- 1 The development must be begun not later than three years beginning with the date of this permission.
Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:
Noise Management Plan by Airtight Noisecheck dated 2nd September 2020
Location and Block Plan Drawing No. 1000
Existing Plans Drawing No. 1001
Existing Elevations Drawing No. 1002
Reason: - To ensure provision of a satisfactory development.

- 3 The use of the ground floor unit(s) hereby permitted shall be solely as either A1, A2, A3, A5 or any indoor sport, recreation or fitness (not involving motorised vehicles or firearms) of D2 and for no other purpose within D2 of the Town and Country Planning (Use Classes) Order 1987, (as amended) or in any provision equivalent to those Classes in any other Statutory Instrument revoking and re-enacting that Order).
Reason: To maintain control and to protect the amenities of residential properties above and nearby, and having due regard to policy DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
- 4 In the event of the ground floor unit(s) being used for an A5 hot food take away, such a use shall only be open for trade or business to the public between the hours of 08:00 and 23:00 on Mondays to Saturdays and between 09:00 and 22:30 on Sundays and Bank Holidays.
Reason: To protect the amenities of nearby residential properties and having due regard to policy DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
- 5 In the event of the ground floor unit(s) being used for any indoor sport, recreation or fitness (not involving motorised vehicles or firearms), such a use shall only be open for trade or business to the public between the hours of 07:00 and 20:00 on Mondays to Fridays; between 09:00 and 16:00 on Saturdays and between 10:00 and 15:00 on Sundays and Bank Holidays.
Reason: To protect the amenities of residential properties above and nearby, and having due regard to policy DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
- 6 The specifications to control noise and vibration and terms of use within the hereby approved Noise Management Plan by Airtight Noisecheck dated 2nd September 2020 shall be implemented in full prior to the first use as any gym or indoor fitness centre, and thereafter adhered to at all times when in use as a gym or indoor fitness centre. This document shall remain a live document and shall be reviewed periodically or as required by the Local Planning Authority, to address any issues arising, or which may arise from changes to the operator.
Reason: To protect the amenities of residential properties above and nearby from noise and vibration, and having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
- 7 Prior to the installation of any means of extraction, filtration or ventilation at the site, full details and specifications of such equipment shall be submitted to and approved in writing by the Local Planning Authority. The details shall include the routing, siting and appearance of any external flue(s), details to assess the potential odour and noise/vibration, manufacturer's operating instructions and a programme of equipment servicing/maintenance. The duly approved scheme shall be implemented in full before any use hereby permitted first takes place and shall remain operational thereafter.
Reason: To safeguard the amenities and health of the occupiers of neighbouring property and having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.