

Recommendation: **GRANT PERMISSION**

APP/14/01192 relating to increased height of new parapet; and ridge lifted by approx 200mm , PERM,22/12/2017

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) use.

4 Policy Considerations

National Planning Policy Framework
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)

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

5 Statutory and Non Statutory Consultations

Environmental Health Manager

I have read the enclosed documentation provided by the applicant in relation to allow for flexible use of Financial & Professional Services (A2), or Restaurants and Café (A3) or Hot Food Takeaway (A5) use, for the ground floor commercial unit and can comment as follows:

Whilst I would have no objection in principle, this type of usage would normally encompass the addition of a ducted extraction system which, dependent on the type of food to be prepared, could lead to a detrimental loss of amenity if not nuisance, to nearby residential properties due to odour, noise and vibration. Other plant can also include chiller and / or air conditioning / heating units and so forth. In this case, from the drawings viewed, it would appear that there is existing residential accommodation directly above this shop and within a distance of 25 metres.

No detail has been provided at this time, relating to the proposed method/s to be utilized for the control of odours from such an extraction system. This may require a high rise flue outlet to the proposed extractor unit.

There is no indication provided as to anti-vibration measures, noise reductions or predictions of noise impact, especially in terms of BS4142:2014, in relation to the nearest residential receptors. The rating levels of any plant & equipment, must be at least 5 dB below the existing background levels.

I would therefore suggest the following condition be included if this application is to be

viewed positively:

Condition 1: Odour, noise and vibration from extraction and other plant equipment:

No development shall start on site until details have been submitted to and approved in writing by the Planning Authority addressing the proposed kitchen ventilation / extraction system that will be used on the site, including the required maintenance regime for the system. Such details should also include any other plant as previously mentioned above. The details shall be prepared by a competent person for the purpose of assessing potential odour and noise/ vibration nuisance to surrounding properties. The agreed details shall be fully implemented before the use hereby approved is commenced and the equipment shall be installed, operated and maintained in accordance with the approved details and shall be retained thereafter.

Reason: To ensure that the residential amenity of the area is not detrimentally affected by the use of the site.

Note: "Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems" produced by Department of Environment Food and Rural Affairs, has now been withdrawn, but can still be viewed as a reference document.

Furthermore, I have noted that the times of operation for A3 & A5 are given as up to 23:00 and 24:00 respectively. Dependent on the type of operation / tenant that may occupy the ground floor unit, there is potential for noise issues, be those from customers late at night, delivery vehicles delivering to or from the site and / or operation of the premises. I would suggest clarification of any set business time limits in place for this area.

In respect of delivery of goods to the premises, I would recommend these should only take place between the hours of 08:00 to 20:00 Monday to Saturday, and 10:00 to 16:00 on Sundays and public holidays, to protect residential amenity.

Environmental Health Manager

I have reviewed the submitted documentation, and the comments from my colleague which recommend a condition requiring approval the technical details of the extraction system, to minimise potential for amenity / nuisance issues at the residential accommodation above, or in the general vicinity.

It should be noted that commercial premises also represent sources of emissions from combustion & heating associated with both cooking and heating (predominantly Particulates, and Nitrogen Oxides). It is possible for health-based hourly air quality benchmarks to be exceeded as a result from point-source emissions from extract terminals serving cooking and heating processes. The exceedance of these benchmarks at the window or air inlet of a residence as a result of emissions from the premises would be regarded as likely to be 'prejudicial to health'.

Policy DM10 includes within it's scope both 'air pollution' & 'health'. This comment is intended to highlight that Environmental Health may consider any other class of emission listed under DM10 when considering the detailed design of the extraction system (e.g. steam, gases, fume), in addition to those highlighted by my colleague. This may require an indication of the specification of the cooking appliances to be served by the system (e.g. fuel, and power in KW/h), but should not be any more onerous than that to permit this to be appropriately considered.

I would recommend that the reason given for 'condition 1' proposed in EH Consultation response Ref CONS/19/02272 04/11/2019 (Mark Moss) is amended to the following, to expand the scope of it's effect:

"Reason: To ensure that neither the residential amenity of the area nor the health of local residents is detrimentally affected by the use of the site."

Planning Policy

Policy Status:

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 follows the redevelopment of the former Hayling Island Conservative Club under planning permission reference APP/14/01192 with a shop and 3 no. two bedroom flats over following the demolition of the previous timber building.

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 have yet to have been occupied notwithstanding their lawful use.

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. Furthermore, it is evident that the applicant has endeavoured to secure an occupier for the unit without success. This should however, be substantiated with marketing evidence in order to justify the deviation from adopted policy.

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.

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 and drink 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. Whilst it is considered that Policy DM2 does not apply, it would be reasonable to expect the applicant to submit marketing evidence to demonstrate that it has not been viable to secure an A1 use in the first instance.

In addition, there is an emerging restriction of A5 uses but this can only be attributed limited weight at this stage.

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: 36

Number of site notices: 1

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 compliance with policy
- (ii) Impact upon the character and appearance of the area
- (iii) Impact upon residential amenity
- (iv) Parking

- (i) Principle of development and compliance with policy

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. This application therefore seeks a speculative, flexible permission to enable wider marketing to find an appropriate user for the site. Financial & professional A2, restaurants and cafes A3 and hot food takeaway A5 uses are all sought. It is noteworthy that if this unit had been occupied for A1 purposes then it would be a permitted development change of use to A2 under Class D of Part 3 of the GPDO and also a permitted development change to class A3 (subject to a prior approval) under Class C.

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 offered some marketing information which indicates that since December 2017 two agents have undertaken a marketing campaign on a variety of portals. Since May 2019 only 2 viewings have been carried out on unit 2 and both were for restaurant or takeaway uses that would have required planning permission; and in April 2019 a heads of terms was agreed for unit 1 but this was a Sui Generis Tanning Salon that did not reach a legal standpoint. The owner/applicant has been flexible in offering the unit as various sizes and with shorter lease terms, reduced rent and incentives, but this has still not helped secure an occupier.

The supporting text to both adopted policies CS4 and AL3 notes 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. Accordingly it is considered that in this instance it has been adequately demonstrated that the unit is not currently needed for A1 purposes and more flexible uses could put the unit into use, providing both jobs and vitality to the area.

The policy objection based on the emerging Local Plan is noted, but currently these policies carry limited weight in decision making.

(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 future A2, A3 or A5 uses would naturally advertise their services.

(iii) Impact upon residential amenity

Since the site has occupied residential flats above, as well as residential dwellings located to the north and west, then the potential for environmental problems from odour, fumes, litter, noise, vibration, air pollution etc needs to be considered and Policy DM5 covers these issues. However the proposal is speculative and without the end user known and actual foods to be prepared it is not possible at this stage to assess the adequacy of any extractor equipment, location of any flues etc.

As a new building with single open internal space the addition of extractor equipment would be relatively straightforward and it would be encouraged to provide as much as possible internally to minimise distraction from the external appearance of the building. The precise siting of any flue, which normally needs to be above ridge height, will have to be carefully considered and take into account proximity to residential windows to minimise any possible adverse effect. It is therefore necessary to condition these matters.

In terms of opening hours 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). Therefore, despite the request to open slightly later than this, it is considered appropriate to match these hours to prevent any further late night nuisance associated with comings and goings, to protect the amenity of nearby residents. The agent has subsequently agreed to this.

(iv) 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 use 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 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/19/01033

(A) 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:

Location, Site and Block Plan Drawing number 1000
Existing Plans Drawing number 1001
Existing Elevations Drawing number 1002

Reason: - To ensure provision of a satisfactory development.
- 3 The ground floor unit(s) 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.
- 4 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.