

Recommendation: **GRANT PERMISSION**

APP/14/00269 Change of use from retail (use Class A1) to a kebab takeaway (use Class A5) Permit

3 Proposal

- 3.1 Change of use from retail shop (A1) to takeaway (A5). New dropped kerb to rear of site in Tidworth Road.
- 3.2 The application relates to one of a terrace of shops within the Park Parade precinct, part of the district centre. It is proposed to change its use from a shop (Class A1) to a hot food take away (Class A5). The unit is currently vacant, having last been occupied by a bicycle shop. "Grill Shack" is mentioned in the description of the proposal, and the related advertisement application and internal layout plans accompanying the application are consistent with this. However, in planning terms the class of use for which permission is sought would cover any type of hot food cuisine. Hours of opening would be 12.00 to 23.59 throughout the week including Sunday and Bank Holidays. The application also seeks permission for a dropped kerb to the rear store building which would facilitate easy cross over from highway into the site for bins and delivery trolleys.
- 3.3 The submitted information includes a petition in support with 32 signatures

4 Policy Considerations

National Planning Policy Framework

Havant Borough Local Plan (Core Strategy) March 2011

CS16	(High Quality Design)
CS4	()
DM10	(Pollution)
DM2	(Protection of Existing Community Facilities and Shops)
DM5	(Control of Class A3, A4 and A5 Food, Drink and Entertainment Uses)

Havant Borough Local Plan (Allocations) July 2014

LP3	(Leigh Park Mixed Use Allocations)
DM21	(Shopfronts, Signs, Security Shutters and Advertisements)
AL3	(Town, District and Local Centres)

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Economic Development - Retail and Town Centres No objection

Crime Prevention -Minor Apps- No comments received

Environmental Health Manager, Community Group

I object to the proposals for the following reasons:-

The development could lead to a detrimental loss of amenity if not nuisance, to nearby residential properties due to odour, noise and general disturbance. I would draw your attention to the document "Consultations on Planning Applications for Hot Food Premises: Guidelines for Odour and Environmental Control" produced by the Hampshire and Isle of Wight Branch of the Chartered Institute of Environmental

Health.

There is residential accommodation within a distance of 25 metres, so, from an Environmental Health perspective, I have to object to the use of this site for any use within Use Class A5, even though, there are similar businesses in close proximity. In any event, I understand that the outcome of past planning appeals would indicate that we could not prevent a subsequent change to a different style of cuisine within Use Class A5.

There is limited detail concerning a proposed extraction system and odour reduction or filtration, and none concerning anti-vibration measures, noise reduction or predictions of noise impact.

Clearly, however, this site is in a town centre location where residents could not reasonably expect the same freedom from the effects of nearby commercial premises that might be expected in a mostly residential area.

Therefore, if of a mind to approve this application I would ask that the following conditions be applied to any consent granted:-

Condition 1 Equipment shall be installed to suppress and disperse fumes and/or smell produced by cooking and food preparation, and the equipment shall be effectively operated for so long as the use continues. Details of the equipment shall be submitted to, and approved by, the Local Planning Authority and the equipment shall be installed and be in full working order to the satisfaction of the Local Planning Authority prior to the commencement of use.

Reason: To ensure that unsatisfactory cooking odours outside the premises are minimised in the interests of the amenity of occupiers of nearby properties.

Condition 2 The extraction equipment installed in pursuance to Condition (No.1) above shall be regularly maintained to ensure its continued satisfactory operation and the cooking process shall cease to operate if at any time the extraction equipment ceases to function to the satisfaction of the Local Planning Authority and shall not be resumed until the system has been restored to full working order. Documentary evidence including receipts, invoices and copies of any service contracts in connection with the use and maintenance of the extraction equipment, shall be kept and made available for inspection at the premises by officers of the Local Planning Authority, to facilitate monitoring of compliance with this condition.

Reason: To ensure that the use does not result in excessive cooking odours outside the premises and that the amenity of occupiers of nearby properties is protected.

Condition 3 A scheme shall be agreed in writing with the Local Planning Authority, which specifies the provisions to be made for the control of noise emanating from the extraction system. The agreed measures shall be put in place, before the development hereby permitted commences.

Reason: To protect the amenities of occupiers of adjoining properties.

Condition 4 If any equipment is to be installed such as refrigeration and / or air conditioning units, schemes shall be agreed in writing with the Local

Planning Authority and approved in writing by the District Planning Authority prior to any development taking place.

Reason: To protect the occupants of nearby residential properties from noise and vibration nuisance.

Condition 5 Mention is made in the Design & Access statement of an illuminated shop front sign. In this regard no flood lighting or other form of external lighting scheme shall be installed unless it has been approved by the Local Planning Authority. Such details shall include, Location, height, type and direction of light sources and intensity of illumination. Any lighting scheme agreed in writing by the Local Planning Authority shall not thereafter be altered without prior consent other than for routine maintenance, which does not change its details.

Reason: To protect the occupants of nearby properties from light disturbance.

In terms of Condition 3 & 4 above, details, including acoustic performance and proposed acoustic attenuation, of all types of fixed plant, machinery and equipment associated with air moving plant, compressors, generators or plant or equipment of a like kind installed within the site, shall be submitted to and approved by the Borough Planning Authority before installation.

N.B. All plant machinery and equipment installed or operated in connection with the carrying out of this permission shall be so enclosed and/or attenuated that noise there from does not, at any time, increase the background noise levels as measured according to British Standard 4142: 1997 at any adjoining or nearby residential property.

BS4142 Requirement

Noise resulting from the use of any/all plant, machinery or equipment shall not exceed a level of 5dB(A) below the existing background level (or 10dB(A) below if there is a particular tonal quality) when measured according to British Standard BS4142-1997.

I would also point out that the requirement to keep documentary evidence regarding maintenance of the extraction system in Condition 2 above, rather than merely adding it as a suggestion in a note, is included as a result of the outcome of Planning Appeal Ref: T/APP/X1735/A/99/1024801/P4 in respect of 341 Milton Road, Cowplain.

Further comments

We will always object to an application for this type of development, as we know it will in all likelihood cause a nuisance to nearby residents. However, in the event that Planning approval is granted, we will ask that certain conditions be imposed in order to mitigate the impact of the likely nuisance/s, on local residents.

As an aside, I don't believe it would be reasonable for us to recommend refusal for this application, as there are a number of similar businesses operating in the immediate vicinity.

Development Engineer - Highways

The Highway Authority has no objection to the change of use. I would point out that the dropped kerb does not require planning permission but it must be approved by the Highway Authority

Planning Policy- Support.

The Local Plan is now comprised of the Core Strategy (2011) and the recently adopted Allocations Plan (2014). It should be noted that Saved Policies are no longer relevant.

This is a revised application to replace application APP/14/00933 which was withdrawn. The applicant has redesigned the shop front and outlined menu options that will be available at the proposed takeaway in this new application, however these changes pose no new implications for planning policy and my comments are therefore the same as for the previous application.

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: 16

Number of site notices: one

Statutory advertisement: Not applicable.

Number of representations received: 9 Including a petition objecting with 14 signatures The main points raised are summarised below:

- There are already 15 food outlets, including numerous takeaways within the main shopping centre and due to the smell, noise litter and anti social behaviour associated with these types of uses, other retail units would be put off from locating with the Greywell Shopping Centre. There is no need for a further takeaway.
- Loss of amenity from smell, noise litter and anti social behaviour associated with these types of uses, increased risk of fire.
- The lack of retail units in the shopping centre has resulted in the remaining retail units suffering a loss of business and are struggling to survive. A further take away will exacerbate this and impacting the livelihood of existing occupiers. The Council should be trying to attract other retailers.
- Indiscriminate parking from delivery drivers and clients would cause congest on the adjoining road and block the rear access. .
- An agglomeration of takeaways would not provide the well needed regeneration of the district centre and it would not attract businesses to invest and the lack of shops would decrease daytime footfall.
- The unit would be closed in the day and result in a negative impact.
- A further takeaway will provide more junk food and encourage obesity.

Comment:

see section 7 and 8

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
- (ii) Effect of the change of use on the character of the District Centre
- (iii) Effect of the A5 use of the nearby residential amenity
- (iv) Highways and access

(i) Principle of development

7.2 The site is located within a defined urban area whereby development is considered to be acceptable subject to other relevant national and local plan policies and development management considerations.

(ii) Effect of the change of use on the character of the District Centre

7.3 The site lies within the district Centre but out side the primary and secondary frontages which are now reduced to the man Greywell Princinct, and part of the western end of Park Parade. Policy AL3 advises that retail should be concentrated in primary shopping frontages and states:-

AL3 (Town, District and Local Centres)

Planning permission will be granted for development proposals that:

1. Provide main town centre uses in the town, district and local centres as defined on the Policies Map, and so contribute to their vitality and viability.
2. Promote and enhance the primary shopping areas of the town and district centres.
3. Retain at least 50% of the units in an unbroken run of primary frontage as defined on the Policies Map in retail (A1) use.
4. Retain at least 25% of the units in an unbroken run of secondary frontage as defined on the Policies Map in retail (A1) use.
5. Generate pedestrian activity within the primary shopping area by being open during the day to visiting members of the public.
6. Provide a shopfront within the primary shopping area with a well designed and appropriate display window.

Exceptions to parts (3) and (4) may be made to allow a change of use to non-retail if more than 25% of units in the unbroken run of frontage are vacant at the time of the application.

7.4 As the site lies does not form part of the primary or secondary frontage and is a town centre unit it would fall under criteria 1 , and whilst there are a relatively high number of hot food outlets in Park Parade, there are also a high number of vacant shops. A large number of empty shops may indicate that a centre is in decline and in need of change to adapt to the future.

7.5 The findings in the Town Centres, Retail, and Leisure Study (2009) suggest that occupancy rates for units in the district centre have been declining for some time and that the nature and demand of shoppers has changed. There is already an

established loss of footfall which may not be solely the result of the number of takeaways which exist within the shopping centre. The shopping centre was built at a time when the internet did not exist and car ownership was less and therefore communities depended on large and vibrant shopping centres within close distance to fulfill shopping needs. Since then the retail industry has changed considerably and as a result large district shopping centres and some high streets have declined with regards to their retail function. The consideration therefore is whether it is more viable to retain an empty retail unit in the hope that they will be occupied in the future, or allow another use, such as a takeaway in the case of this application, to occupy the unit and retain an active shop frontage and attract some degree of footfall, custom and employment into the shopping area.

7.6 AL3 suggests that the latter is the preferred option as the proposed change of use would provide an active, publicly accessible, use at ground floor level. This would increase levels of natural surveillance and deter anti-social behaviour as the unit is occupied as opposed to being vacant. This along with the removed designation of the shopping frontage in the Allocations Plan, suggests that it would be unreasonable to refuse the application in the hope that the unit would one day be taken up as a retail unit when evidence suggests this is unlikely to happen.

7.7 It is noted that there are around sixty units currently trading in the District Centre of which 15 premises sell hot food. Nine of these are hot food take away and of these most of them are in Park Parade. The proposal would constitute a further hot food premises in Park Parade and these are fairly evenly spaced, with several other shops in between each of them. It is not considered that the proposal would give rise to excessive over-concentration of hot food/take away premises in Park Parade but it remains possible that it would displace some custom from the existing hot food outlets in Park Parade, which is currently more reliant on the presence of hot food premises, and contains the greatest concentration of vacancies.

7.8 However, in terms of policy AL3, whether any negative impact could be regarded as a failure to contribute to the vitality and viability of the District Centre overall is hard to evidence and is open to speculation. By contrast, it can be said that the proposal will rejuvenate an existing vacant unit, leading to improved footfall and viability in Greywell Road.

(iii) Effect of the A5 use of the nearby residential amenity

7.9 Policies CS16, DM10 and DM5 refer to the consideration of neighbouring amenities and matters such as noise and odour. The last of these policies requires that measures are incorporated in the development of hot food premises to mitigate effects on nearby residents.

7.10 In terms of noise, which is a concern to residents of flats above and close to the application site, it is noted that other traders are open in the evening in Park Parade. Whilst the proposal would add to activity in the area the Crime Prevention office has been consulted but not commented, and with several hot food premises already established and trading in the evening in the District Centre it is not considered that a strong case could be made to support concerns about the risk of additional noise. The applicant states that the business would not be open after midnight which is consistent with the recent permission at 38 Park Parade and could be made subject of a planning condition. Any air extraction equipment would be subject to Environmental Health controls, which govern their acoustic performance.

7.11 In terms of odour, it is proposed to use the existing 12m high flu and fumes will be discharged above first floor level and the amenity area of the flats above. Further details on the means of extraction are required and conditions covering this are recommended by environmental Health.

7.14 It is also noted that separate Environmental Health powers could be used to address excessive odour, for example, if filters are not regularly cleaned or a higher standard of extraction equipment proves to be needed.

(iv) Highways and access

7.20 The highway engineer has raised no objection. In this it is acknowledged that the existing premises has a retail use, which could cover a range of activities and goods and the associated need for loading. The proposal is not considered to be demonstrably or significantly different in this respect.

8 Conclusion

8.1 Whilst it may affect other hot food businesses and footfall in Park Parade, which has a higher number of vacancies than Greywell Road, there is no compelling evidence as to the effect on the viability and vitality of the District Centre overall, as set out in policy AL3, but such evidence is hard to come by for development of this small scale.

8.2 The Crime Prevention officer has not raised objection. The hours of use can be controlled, and there is no objection from the Highway officer.

8.3 In terms of odour, it is impossible to remove all risk however, there is an existing 12m tall flue to extract fumes and this aspect of the proposal is considered reasonable.

8.4 Whilst acknowledging the potential impact of the proposal both in terms of the vitality & viability of the District Centre, and on neighbouring amenities, these are not considered to be so clearly negative or significant in degree as to justify refusal, but planning conditions are recommended..

9 RECOMMENDATION:

That the Executive Head of Planning and Built Environment be authorised to **GRANT PERMISSION** for application APP/14/01213

subject to the following conditions

1 The development hereby permitted shall be begun before the expiration of 3 years from the date on which this planning permission was granted.

Reason: To comply with Section 51 of the Planning and Compulsory Purchase Act 2004.

2 The takeaway premises hereby permitted shall not open to the public before 1200 hours or remain so open after 2400 hours.

Reason: To protect the amenities of nearby residential properties and having

due regard to policies DM5 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

- 3 No development hereby permitted shall commence until a specification of the provision to be made for the storage and disposal of refuse following the commencement of the use hereby permitted has been submitted to and approved in writing by the Local Planning Authority. This must also include a scheme for the dispose of customer refuse and litter. The use hereby permitted shall not commence until the implementation of such provision for refuse has been completed in full accordance with such an approved specification.

Reason: To safeguard the amenities of the locality and having due regard to policies DM10 and DM5 of the Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

- 4 No development shall commence until details of equipment, including the provisions to be made for the control of noise emanating from the extraction system, to suppress and disperse fumes and/or smell produced by cooking and food preparation shall be submitted to and approved in writing by the Local Planning Authority, and the equipment shall be installed and be in full working order to the satisfaction of the Local Planning Authority prior to the commencement of use and shall be effectively operated for so long as the use continues.

Reason: To ensure that unsatisfactory cooking odours outside the premises are minimised in the interests of the amenity of occupiers of nearby properties and having due regard to policies DM5 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

- 5 The extraction equipment installed in pursuance to Condition (No.4) shall be regularly maintained to ensure its continued satisfactory operation and the cooking process shall cease to operate if at any time the extraction equipment ceases to function to the satisfaction of the Local Planning Authority and shall not be resumed until the system has been restored to full working order. Documentary evidence including receipts, invoices and copies of any service contracts in connection with the use and maintenance of the extraction equipment, shall be kept and made available for inspection at the premises by officers of the Local Planning Authority, to facilitate monitoring of compliance with this condition.

Reason To ensure that unsatisfactory cooking odours outside the premises are minimised in the interests of the amenity of occupiers of nearby properties and having due regard to policies DM5 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and thw National planning Policy Framework 2012

- 6 No development shall commence until details of equipment,including acoustic performance and proposed acoustic attenuation, of all types of fixed plant, machinery and equipment associated with air moving plant, compressors, generators or plant or equipment of a like kind installed within the site, have been submitted to and approved in writing by the Local Planning Authority, and the equipment shall be installed and be in full working order to the satisfaction of the Local Planning Authority prior to the commencement of use

and shall be effectively operated for so long as the use continues.

All plant machinery and equipment installed or operated in connection with the carrying out of this permission shall be so enclosed and/or attenuated that noise there from does not, at any time, increase the background noise levels as measured according to British Standard 4142: 1997 at any adjoining or nearby residential property. Noise resulting from the use of any/all plant, machinery or equipment shall not exceed a level of 5dB(A) below the existing background level (or 10dB(A) below if there is a particular tonal quality) when measured according to British Standard BS4142-1997.

Reason: In the interests of the amenity of occupiers of nearby properties and having due regard to policies DM5 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

- 7 The development hereby permitted shall not commence until plans and particulars specifying the provision to be made for external lighting of the same has been submitted to and approved in writing by the Local Planning Authority. There shall be no external lighting on the site other than as thereby approved.

Reason: To safeguard the amenities of the locality and/or in the interests of traffic safety and having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

- 8 The development hereby permitted shall be carried out in accordance with the following approved plans:

Design and Access Statement

Location Plan

Site Plan

Proposed floor plans and elevations COU/2014/01B

Reason: - To ensure provision of a satisfactory development.