

<u>No:</u>	BH2021/00570	<u>Ward:</u>	Wish Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	169 Portland Road Hove BN3 5QJ		
<u>Proposal:</u>	Change of use from restaurant (E) to takeaway (Sui Generis), erection of single storey rear extension, installation of ventilation/extraction system and flues to rear and associated works. (Part-retrospective)		
<u>Officer:</u>	Jack Summers, tel: 296744	<u>Valid Date:</u>	07.05.2021
<u>Con Area:</u>	N/A	<u>Expiry Date:</u>	02.07.2021
<u>Listed Building Grade:</u>	N/A	<u>EOT:</u>	
<u>Agent:</u>	N/A		
<u>Applicant:</u>	Mr Sepand Sarmadi Flat 8 Harrington Mansions 5A Harrington Road Brighton BN1 6RE		

1. RECOMMENDATION

- 1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** planning permission subject to the following Conditions and Informatives:

Conditions:

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.

Reason: For the avoidance of doubt and in the interests of proper planning.

Plan Type	Reference	Version	Date Received
Location Plan	-	-	18 February 2021
Proposed Drawing	01	B	24 May 2021
Block Plan	02	-	26 April 2021

2. The rear extension hereby permitted shall have external walls finished in painted render to match the appearance of the rear wall on the host building.

Reason: To ensure a satisfactory appearance to the development in the interests of the visual amenities of the area and to comply with policies QD14 of the Brighton & Hove Local Plan and CP12 of the Brighton & Hove City Plan Part One.

3. Access to the flat roof over the extension hereby approved shall be for maintenance or emergency purposes only and the flat roof shall not be used as a roof garden, terrace, patio or similar amenity area.

Reason: In order to protect adjoining properties from overlooking and noise disturbance and to comply with policies QD14 and QD27 of the Brighton & Hove Local Plan.

4. The development hereby permitted shall not be first occupied until further details of all ducts and extraction equipment associated with the use of the property as a hot food takeaway business have been submitted to and approved in writing by the Local Planning Authority. The details shall include:
- Elevational drawings showing the precise dimensions and locations of all ducts and extraction equipment
 - Details of all odour control measures included within the ducts and/or extraction equipment.
 - Details of all noise control measures included within the ducts and/or extractive equipment.

The ducts and extraction equipment shall be implemented in strict accordance with the approved details prior to the first occupation of the development and shall thereafter be retained as such.

Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies SU9, SU10 and QD27 of the Brighton & Hove Local Plan.

5. No customers shall remain on the premises outside the hours of 10:00 to 00:00 (the next day) Monday to Saturday and 10:00 to 23:00 on Sundays, Bank and Public Holidays. No activity within the site shall take place between the hours of 01:00 and 07:30 daily.

Reason: To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

6. No machinery and/or plant shall be used at the premises except between the hours of 09:30 and 00:30 (the next day) on Mondays to Saturdays and 09:30 and 23:30 on Sundays, Bank or Public Holidays.

Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

7. Prior to the first occupation of the development hereby permitted, details of secure cycle parking facilities for staff shall have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.

Reason: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles and to comply with policy TR14 of the Brighton & Hove Local Plan.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.
2. The applicant should be aware that whilst the requisite planning permission may be granted, this does not preclude the department from carrying out an investigation under the Environmental Protection Act 1990, should any complaints be received.

3. The applicant is advised to ensure that any advertisements they wish to display benefit from advertisement consent under The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) prior to their display.
4. The applicant is advised to contact permit.admin@brighton-hove.gov.uk if they wish to suspend parking outside the application site during the delivery and construction period.
5. In order to be in line with Policy TR14 Cycle Access and Parking of the Brighton & Hove Local Plan 2005 cycle parking must be secure, convenient (including not being blocked in a garage for cars and not being at the far end of a rear garden), accessible, well lit, well signed, near the main entrance, by a footpath/hardstanding/driveway and wherever practical, sheltered. It should also be noted that the Highway Authority would not approve vertical hanging racks as they are difficult for many people to use and therefore not considered to be policy and Equality Act 2010 compliant. Also, the Highway Authority approves of the use of covered, illuminated, secure 'Sheffield' type stands spaced in line with the guidance contained within the Manual for Streets section 8.2.22 or will consider other proprietary forms of covered, illuminated, secure cycle storage including the Police approved Secure By Design cycle stores, "bunkers" and two-tier systems where appropriate.

2. SITE LOCATION

- 2.1. The application site is a ground floor commercial unit on the north side of Portland Road. It was formally in use as part of a larger (E Use Class) restaurant across the ground floors of 169, 171 and 173 Portland Road.

3. RELEVANT HISTORY

None

4. APPLICATION DESCRIPTION

- 4.1. Planning permission is sought for a change of use from a restaurant to a hot food takeaway (sui generis). The proposal would create a new planning unit at the application site which would be separated from the existing restaurant which will continue to operate from 171-173 Portland Road.
- 4.2. The proposal would incorporate minor works to the shop front, erection of a single storey rear extension and installation of ventilation duct at the rear.
- 4.3. At the time of the site visit the ventilation duct had been installed in part but the other aspects of the development had yet to be carried out.

5. REPRESENTATIONS

- 5.1. **Nine (9)** representations have been received (from a total of six persons), objecting to the proposal on the following grounds:
- Noise nuisance from machinery
 - Odour nuisance from proposed use
 - Disruption to private garages at the rear of the property
 - Noise nuisance from additional traffic
 - Pollution from additional traffic
 - Damage from vehicle movements
 - Anti-social behaviour towards private garage-owner(s)
 - No parking at the rear of the property, contrary to submitted information
- 5.2. A representation has also been received from **Councillor Nemeth**, a copy of the representation is attached.

6. CONSULTATIONS

- 6.1. Sussex Police
Concerns about pick up and drop off parking provision given the site is within a Controlled Parking Zone, as this has the potential to encourage illegal parking. There is the likelihood of double parking causing obstructions, the blocking of emergency vehicle and bus routes and resident disharmony. Concerns about a build-up of similar businesses in the area and the cumulative highways impacts.
- 6.2. Transport
No objection, subject to imposition of condition requiring provision of staff cycle parking to encourage trips to and from the site by more sustainable means.
- 6.3. The application site is within a Controlled Parking Zone; the mechanism for controlling parking exists, particularly during peak travel periods, and so it wouldn't be justified to refuse the creation of an additional takeaway business in principle on these grounds. The area to the rear of the site is private-owned land and current or proposed parking arrangements would not be upon the adopted public highway so fall outside the remit of the Highway Authority.

7. MATERIAL CONSIDERATIONS

- 7.1. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other material planning considerations identified in the "Considerations and Assessment" section of the report
- 7.2. The development plan is:
- Brighton & Hove City Plan Part One (adopted March 2016);
 - Brighton & Hove Local Plan 2005 (retained policies March 2016);

- East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);
- Shoreham Harbour Joint Area Action Plan (JAAP) 2019.

7.3. Due weight has been given to the relevant retained policies in the Brighton & Hove Local Plan 2005 according to their degree of consistency with the NPPF.

8. RELEVANT POLICIES & GUIDANCE

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One (CPP1)

SS1 Presumption in Favour of Sustainable Development

CP2 Sustainable economic development

CP9 Sustainable transport

CP12 Urban design

CP13 Public streets and spaces

Brighton & Hove Local Plan (BHLP) (retained policies March 2016)

TR7 Safe development

TR14 Cycle access and parking

SU9 Pollution and nuisance control

SU10 Noise nuisance

QD5 Design - street frontages

QD10 Shop Fronts

QD14 Extensions and alterations

QD27 Protection of amenity

SR6 Local centres

East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan (WMP)

WMP3 Implementing the Waste Hierarchy

Brighton & Hove City Plan Part Two

Policies in the Proposed Submission City Plan Part Two do not carry full statutory weight but are gathering weight as the Plan proceeds through its stages. They provide an indication of the direction of future policy. Since 23rd April 2020, when the Plan was agreed for submission to the Secretary of State, it has gained weight for the determination of planning applications. The weight given to the relevant CPP2 policies considered in determining this application is set out in the Considerations and Assessment section below where applicable.

DM12 Primary, Secondary and Local Centre Shopping Frontages

DM18 High quality design and places

DM20 Protection of Amenity

DM21 Extensions and alterations

DM23 Shop Fronts

DM33 Safe, Sustainable and Active Travel

9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main considerations in the determination of this application relate to the principle of the change of use class; the design and appearance of the physical alterations; and the potential impacts on the amenities of local residents and on highway safety.

Principle of Development

- 9.2. The proposed development would result in the loss of an E Use Class unit (most recently in use as a restaurant) and creation of a sui generis hot food takeaway. The site lies within the Local Centre of Portland Road and policy SR6 of the Brighton and Hove Local Plan is therefore a consideration, however it is important to consider the amendment to the Use Classes Order made in September 2020 which has greatly increased the flexibility of many commercial units, allowing them to change between a variety of uses under the umbrella E Use Class without the need for express planning permission. Policy SR6 seeks to resist the loss of shop units - which prior to September 2020 would have been in Use Class A1 - and given that the current proposal would result only in the loss of restaurant space (formerly Class A3) it is not considered that there is any policy conflict in this regard. There is currently a diverse mix of units within the vicinity along Portland Road. The proposal would not negatively impact on the vitality of the retail area.

Design and Appearance

- 9.3. The works to the front elevation are minor and the general appearance of the frontage would be maintained; there are no concerns in this regard. The single-storey rear extension is proposed to be finished in render to match the main building and is also considered acceptable in terms of appearance.
- 9.4. Limited details of the ventilation duct are shown on the proposed drawings; the applicant has agreed to a planning condition requiring further details (including the appearance and form of the duct) prior to their final installation. The duct causes a degree of harm to the visual amenity of the building as viewed from the rear, though the flue would not terminate above the ridge of the roof and as such this harm is limited to views from private land and does not impact on views from the public highway.

Impact on Amenities

- 9.5. Whilst the proposed change from a restaurant to a takeaway has the potential to intensify the use with an increase in movements to and from the premises it is not considered that this would be at a level that would likely result in any significant harm to neighbouring amenity.
- 9.6. Concerns have been raised that the additional ventilation plant would cause noise and odour nuisance. Further information on the ducting shall be secured

by condition and mitigation measures will be required to be built into the system to ensure noise, vibration and odour are adequately controlled.

- 9.7. Planning conditions are proposed to restrict opening hours and the hours of use for all machinery.
- 9.8. The potential impact caused by the building works themselves is not a material planning consideration that can be given any significant weight in the assessment of this proposal.
- 9.9. The rear extension is adjacent to a shared boundary, but it is not considered that its physical structure would cause any harmful overshadowing or overbearing impact to neighbouring residents. A condition would be attached restricting access to the flat roof for anything other than maintenance or in the event of an emergency. It is considered that access as an amenity space could cause a harmful sense of overlooking for neighbours in the adjoining properties.

Impact on the Public Highway

- 9.10. Multiple objections have been raised about the impact of the proposed business on highway safety in the area, which reportedly already suffers from an abundance of unauthorised parking issues. The Local Highway Authority has fully assessed the application and has not objected.
- 9.11. It is considered that the cumulative impacts of multiple businesses should be assessed as part of a wider investigation by the Council and it would not be reasonable to prejudice the current proposed business for an existing situation. It would also not be reasonable, as requested by one or more representations, to require 'proof' from the applicant that unauthorised parking would not occur as a result of their business operations. It is the responsibility of each business-owner to ensure they and their staff operate within the law, with regards to vehicle parking, and if issues are discovered they can be managed by Sussex Police or the Local Highway Authority, as appropriate. It is not considered that a presumption of unauthorised parking is reasonable grounds to withhold planning permission.
- 9.12. There is space at the rear of the site for secure cycle parking for staff. Such parking would encourage trips to and from the site by means other than private motor vehicle and will help increase the sustainability of the business; this shall be secured by condition prior to occupation.

Other Considerations

- 9.13. Concerns have been raised regarding the impact of the development on the private car park to the rear of the application site, and the garages that are accessed from it. It is noted that the applicant has described an area immediately to the rear of the site as a car parking space and that many objections state that this land is not for such a use. This land is privately owned; any disagreements regarding ownership of any single part of it, access on or across it, or potential damage to it from vehicle movements, are civil matters beyond the remit of the planning system. If the landowner objects to access to the rear of the application site, for instance, by delivery vehicles, then there are legal avenues they can

take to address this. This would not be reasonable grounds to withhold planning permission.

- 9.14. Concerns have also been raised that insufficient local consultation was carried out as part of the application process. Ward councillors were consulted as part of standard procedure via the Weekly List; this particular application was included on the List published on 12th May 2021. Letters were sent to properties which share a site boundary with the application site, being posted also on 12th May 2021.
- 9.15. Further concerns relate to alleged anti-social behaviour; details on the incident(s) are limited within the representation. Such behaviour would require addressing through alternative regimes and is not a reasonable ground to withhold planning permission.

Conclusion

- 9.16. The proposed change of use class and the associated physical alterations are considered acceptable; potential harm caused from additional traffic, or environmental health-related issues including noise and odour can be managed through alternative regimes and are not reason to withhold planning permission. For these reasons the proposal is considered to be in accordance with policies TR14, SU9, SU10, QD5, QD10, QD14 and QD27 of the Brighton and Hove Local Plan; and CP2, CP9, CP12 and CP13 of the City Plan Part One.
- 9.17. It is also considered that the proposal would also be in accordance with policies DM20, DM21, DM23, DM33, DM35, DM36 and DM40 of the Proposed Submission City Plan Part Two which is gathering weight. These policies are considered to have significant weight at this stage and policy DM23 is considered to have more weight than the adopted Local Plan policy QD10.

10. EQUALITIES

None identified