

<b><u>No:</u></b>	<b>BH2021/01814</b>	<b><u>Ward:</u></b>	<b>Hollingdean And Stanmer Ward</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>4 Coldean Lane Brighton BN1 9GD</b>		
<b><u>Proposal:</u></b>	<b>Change of use from residential (C3) to mixed use residential and hot food takeaway (Sui Generis). (Retrospective)</b>		
<b><u>Officer:</u></b>	Joanne Doyle, tel: 292198	<b><u>Valid Date:</u></b>	17.05.2021
<b><u>Con Area:</u></b>		<b><u>Expiry Date:</u></b>	12.07.2021
<b><u>Listed Building Grade:</u></b>		<b><u>EOT:</u></b>	
<b><u>Agent:</u></b>	Whaleback Planning & Design Whaleback Planning & Design The Old Bank 257 New Church Road Hove BN3 4EE		
<b><u>Applicant:</u></b>	The Cambodia Kitchen 4 Coldean Lane Brighton BN1 9GD		

## 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 **REFUSE** planning permission for the following reasons:

1. The hot food takeaway set in a residential setting, would conflict with the residential character of the immediate area, result in an incongruous addition to the residential setting and an awkward mixture of uses, result in harm to neighbouring amenity due to the disturbance associated with the comings and goings and result in Highway Safety concerns, contrary to policies TR7, SU10 and QD27 of the Brighton and Hove Local Plan, policy CP9 of City Plan Part One and DM20, DM33 and DM40 of the Submission City Plan Part 2.

### 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. This decision is based on the drawings received listed below:

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Location Plan	-	-	17 May 2021
Block Plan	-	-	17 May 2021
Report/Statement	-	-	17 May 2021
Report/Statement	Management Plan	-	17 August 2021

## 2. SITE LOCATION

- 2.1. The application site relates to land to the front of no. 4 Coledean Lane, specifically the drive way of a semi-detached property located on the western side of Coldean Lane.

### **3. RELEVANT HISTORY**

#### No.4 Coledean Lane

- 3.1. **ENF2021/00122:** Unauthorised A5 fast food takeaway business at 4 Coldean Lane Brighton. March 2021.

#### Field End, Greenways

- 3.2. **BH2017/03966-** Change of use from dwelling house (C3) to mixed use dwellinghouse and hot food takeaway within the garage including erection of external pizza oven. Refused 31.01.2019

- 3.3. Appeal Allowed  
(APP/Q1445/W/19/3234376)

#### The Hames, Ovingdean Road

- 3.4. **BH2017/02197 -** Change of use from residential garage (C3) to hot food takeaway (A5) with food preparation (Retrospective). Refused 29.08.2017.

- 3.5. Appeal Dismissed  
(APP/Q1445/W/17/3187835)

### **4. APPLICATION DESCRIPTION**

- 4.1. The application seeks a change of use of land to the front of no. 4 Coledean Lane from residential (C3) to mixed use residential and hot food takeaway (Sui Generis).

- 4.2. The application is retrospective and follows an enforcement investigation for the unauthorised stationing of a fast-food takeaway business (food trailer) to the front of no. 4 Coldean Lane. As existing, the site is operating the unauthorised commercial business for four days a week, between the hours of 16.00-21.00. The business is operating as a collection only service.

### **5. REPRESENTATIONS**

- 5.1. **Eight (8)** letters of representation have been received objecting to the proposal for the following reasons:
- Unfair competition
  - Set a precedent
  - Example of another takeaway not the same context
  - Already established shops
  - Traffic and parking issues

- Dangerous traffic and issues
- Out of character
- Already a rundown area
- Detrimental impact
- Smells and fumes impact
- Restrictive covenants prohibiting trade
- Rubbish and recycling
- Noise and disturbance
- Enough food establishments in area
- Doesn't meet the definition of sustainable growth
- Liable for non domestic rates
- Inaccuracies in submission

5.2. **Fourteen (14)** letters of representation have been received in support of the proposal for the following reasons:

- Local enterprise
- Affordable
- Nice, friendly
- Well run
- Delicious food
- Support a family business
- Accessible parking
- Asset to the local area
- Good design
- Quiet
- Cars already parked on pavement

## 6. CONSULTATIONS

6.1. **Sustainable Transport:** Objection

Verbal comment - Unable to recommend approval of this application for the following reasons: parking issues and safety concerns.

6.2. **Environmental Health:** No objection

No objection subject to recommended conditions.

6.3. **Police:** Comment

No objection subject to recommended conditions.

## 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. POLICIES

### The National Planning Policy Framework (NPPF)

#### Brighton & Hove City Plan Part One

SS1	Presumption in Favour of Sustainable Development
CP2	Sustainable economic development
CP3	Employment land
CP9	Sustainable transport
CP10	Biodiversity
CP12	Urban design
CP18	Healthy city

#### Brighton & Hove Local Plan (retained policies March 2016):

TR7	Safe Development
TR14	Cycle access and parking
SU9	Pollution and nuisance control
SU10	Noise Nuisance
QD27	Protection of amenity

#### Brighton & Hove City Plan Part Two (CPP2) (emerging)

Policies in the Proposed Submission City Plan Part 2 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 23 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 key CPP2 policies considered in determining this application is set out below where applicable.

DM20	Protection of Amenity
DM33	Safe, Sustainable and Active Travel
DM40	Protection of the Environment and Health - Pollution and Nuisance

#### Supplementary Planning Documents:

SPD12	Design Guide for Extensions and Alterations
SPD14	Parking Standards

## 9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main considerations in the determination of this application relate to the principle of the change of use, the impact upon neighbouring amenity, and sustainable transport issues.

### **Principle of Development/Design and Appearance:**

- 9.2. Retrospective permission is sought for the change of use of land to the front of no. 4 Coledean Lane from residential (C3) to mixed use residential and hot food takeaway (Sui Generis).
- 9.3. The application is located on Coldean Lane which is a residential area and in close proximity to the Sussex University Campus. The application site relates to the front hardstanding of a residential property surrounded by residential uses and with no commercial uses within the immediate area. There are no commercial food takeaways within the immediate area and although there are commercial uses, these are located within a parade of commercial shops at Park Road to the south of the site.
- 9.4. The proposed change of use would result in the addition of a commercial business in this location which is likely to conflict with the established residential character within the immediate area and is considered to be out of character in the immediate context. The siting of a fast food trailer to the front of the property would be an incongruous addition to the residential setting and could set a precedent for further fast food trailers to the front of the properties along Coldean Lane. Whilst this type of use may be acceptable within, or in the context of a parade of shops, where the mixture of residential and commercial uses and the associated character is established, the proposal of a commercial use of this nature on a residential plot is considered an awkward and inappropriate mixture of uses. The proposal is therefore not considered appropriate and is unacceptable in principle.
- 9.5. The application has made reference to an approved scheme for The Wild Flour Pizza located in Ovingdean which was approved on appeal and granted permission for a residential and takeaway use on the site (BH2017/03966). The Planning Inspectorate in their assessment of that application considered that, 'I do not conclude that the proposal would result in an awkward mix of uses or have harmful impacts to the living conditions of those living at Field End or other neighbouring properties in the area, from what is a small scale business with opening times limited to only three evenings a week' and that, 'having a small takeaway in a residential setting is not particularly uncommon'. This previous application was assessed on its own merits and the conclusions of the Planning Inspectorate do not necessarily result in all applications of this nature being approved. It is also clear that the Wild Flour Pizza application is not comparable to the application site in context. The site at Field End, Greenways relates to a detached property with an adjoining garage and outbuilding, with the hot food takeaway operating from the garage. This is in contrast to the operation of a takeaway service to the front of a semi-detached property and close to the adjoining residential properties along this stretch of Coldean Lane. Whilst

acknowledged, the approval at The Wild Flour Pizza located in Ovingdean does not set a precedent for hot food trailers to be approved in all residential settings.

**Impact on Neighbouring Amenity:**

- 9.6. Policy QD27 of the Brighton & Hove Local Plan states that planning permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health. This is reflected in emerging Policy DM20 of CPP2.
- 9.7. Policies SU9 and SU10 of the Local Plan are concerned with development that could cause pollution and nuisance, for example by way of odours, or which could cause a noise nuisance to occupiers of nearby noise sensitive premises.
- 9.8. The scheme is likely to generate the potential for noise and disturbance from comings and goings from customers, particularly given that the application property is a semi-detached property so effectively the disturbance would be immediately outside the property adjoining.
- 9.9. The proposal is a commercial operation beyond the scale of what could be expected in a residential front hardstanding. The food outlet operates for four nights a week in the evenings and whilst it is acknowledged that the proposed use would be fairly low-key in terms of operational hours, the disturbance associated with the customers and operation proposed use would still remain. The activity would be particularly noticeable given the context of the site, forming the front hardstanding of a pair of semi detached properties set in a row of residential dwellings along Coldean Lane. Even if the collection times were managed through the submitted Management Plan, or with allocated time slots, this would be problematic to be enforced through the planning system.
- 9.10. The Environmental Health Officer has commented that provided the hours of operation are conditioned they do not object to the scheme, and whilst odour impacts could be mitigated, the concentrated comings and goings cannot, and the scheme is not supported by the Local Planning Authority partly for these fundamental reasons.
- 9.11. For the reasons outlined above, the scheme would result in harm to neighbouring amenity which warrants the refusal of planning permission on these grounds, contrary to policies SU10 and QD27 of the Brighton and Hove Local Plan and DM20 and DM40 of of CPP2 which can be given significant weight.

**Sustainable Transport:**

- 9.12. The Highways Officer has raised a number of concerns regarding the operation of the food outlet and is therefore unable to support the proposal given the parking issues and safety concerns.
- 9.13. The submission indicates that there would be no deliveries made to or from the site with the owners of the trailer purchasing the food from a wholesaler. The applicant states that the householders park their vehicles to the west of the trailer

leaving customers the space to access the trailer when collecting food. The applicant states that there is an average of 1-2 customers per hour visiting the trailer by car of which they either park on the pavement or in the surrounding area.

- 9.14. The Highways Officer has raised concern that the customer parking which is proposed on the footway and dropped kerb cannot be supported as the footway has not been designed or enforced for vehicle use. It is also unclear if the proposed residential parking layout can be achieved as the access is on private land. The proposed parking on the pavement in combination with the residential parking and footway pedestrian users would result in unsafe access to the site. If planning permission were otherwise recommended for approval consideration would be given to implementing 'No Waiting' provisions to prohibit such parking. The proposal therefore does not provide policy compliant parking and would result in safety concerns, contrary to policies TR7 of the Brighton and Hove Local Plan, CP9 of the City Plan Part One and DM33 of CPP2 which can be given significant weight.

**Conclusion:**

- 9.15. As identified above, the proposed use would be fairly low-key in terms of operational hours and there would also likely be some benefits of such a use with a number of letters of support for the proposal, however the benefits are not considered to outweigh the identified issues detailed above. The proposal for a hot food takeaway on a residential site would conflict with the residential character of the immediate area, would result in an incongruous addition to the residential setting, would result in harm to neighbouring amenity due to the disturbance associated with the comings and goings and the proposal does not provide policy compliant parking and would result in safety concerns related to the safe operation of the highway.

- 10. EQUALITIES**  
None identified.

**11. CLIMATE CHANGE/BIODIVERSITY**

- 11.1. The site is served by public transport, and customers could access the site by foot, which could reduce reliance on cars.

