

<b>App.No:</b> 170916 (PPP)	<b>Decision Due Date:</b> 14 <sup>th</sup> September 2017	<b>Ward:</b> Sovereign
<b>Officer:</b> Thea Petts	<b>Site visit date:</b> 6 <sup>th</sup> September 2017	<b>Type:</b> Planning Permission
<b>Site Notice(s) Expiry date:</b> 13 <sup>th</sup> August 2017		
<b>Neighbour Con Expiry:</b> 13 <sup>th</sup> August 2017		
<b>Press Notice(s):</b> N/A		
<b>Over 8/13 week reason: Given committee cycle</b>		
<b>Location:</b> 36 Beatty Road, Eastbourne		
<b>Proposal:</b> Change of use from class A1 (Bakery) to A3 & A5 (restaurant & takeaway).		
<b>Applicant:</b> Mr Ayhan Kiratli		
<b>Recommendation:</b> Refuse		

### **Executive Summary:**

This application is reported to planning committee at the discretion of the Chair and to allow the applicant the opportunity to address Members.

In planning terms this application is identical to one refused in 2016. As the policy issues and impacts/factors involved in this case have not changed since the 2016 application a recommendation that the application is refused for the same reasons as previously stated.

### **Planning Status:**

Vacant retail unit within a key shopping area

### **Relevant Planning Policies:**

National Planning Policy Framework

1. Building a strong, competitive economy
2. Ensuing the vitality of town centres

Eastbourne Core Strategy Local Plan Policies 2013

B2 Creating Sustainable Neighbourhoods

C13 St Anthony's & Langney Point Neighbourhood Policy

D4 Shopping - St Anthony's (Beatty Way) Local Shopping Centre

Eastbourne Borough Plan Saved Policies 2007

SH7 District Local and Neighbourhood Centres

US5 Tidal Flood Risk

HO2 Predominantly Residential Areas  
HO20 Residential Amenity

**Site Description:**

The site refers to an existing retail unit within an established Local Shopping Centre as defined by Saved Policy SH7 of the Borough Plan 2007. The unit is ground floor in a parade of units with residential units above. The unit is currently vacant, with the last use being a Class A1 Bakery.

**Relevant Planning History:**

160617

Change of use from class A1 (Bakery), to A3 & A5 (restaurant & takeaway)

Planning Permission

Refused

20/07/2016

110319 (No.44 Beatty Road)

Change of use from Launderette to Café A3.

Planning Permission

Approved conditionally

06/09/11

950266 (No.38 Beatty Road)

Change of use from retail shop (A1) to hot food take-away (A3).

Planning Permission

Approved conditionally

19/07/1995

**Proposed development:**

The application proposes the change of use from retail (Class A1) to restaurant and takeaway (Class A3 and A5). The layout plan submitted with the application shows 1 table with 4 chairs, the rest of the floorspace is given to food cooking, preparation and storage.

**Consultations:**

Internal:

Planning Policy – object to the proposal

- The Council will seek to encourage the continuing vitality and viability of shopping centres, whilst preserving the predominance of A1 uses class.' The Eastbourne Borough Plan also states that a valid consideration in maintaining the vitality and viability of district, local and neighbourhood centres is the balance of A1 retail uses to A2/A3. It will become less viable if too many non-A1 uses get accepted, as this may result in 'dead frontage' which is unattractive to customers.
- This site location consists of 8 units, two of which are A2, two A3 class and one D1. Including the proposed unit, this area has three A1 uses. If this unit is changed from A1 use, it would contradict the policy, as A1 use would no longer be predominating.
- The loss of an A1 unit will mean that A1 uses do not predominate in the designated shopping centre. This will have an adverse impact on the vitality and

viability of the shopping centre, meaning that this proposal is contrary to Core Strategy Policy D4 and Borough Plan Policy SH7.

External:

Highways ESCC – no objection

- The uses are likely to be comparable
- ESCC Highways does not wish to restrict the granting of consent

Neighbour Representations:

Five objections have been received and cover the following points:

- The type of fast food outlet is different to that proposed last time, but may still revert to a kebab shop
- There is no need for further food outlets as parade has enough and more available at nearby Sovereign Harbour
- Eastbourne benefits from lots of pizza delivery places
- Only change has been reduction in opening times
- Car park functionality will be stretched
- Unit will have major impact in terms of noise pollution, litter and general disturbance
- Previous scheme refused due to impact on retail provision (Policy SH7)
- To have A3/A5 representing 30% of a local shopping centre would be out of proportion
- To have a A3/A5 unit directly next door to fish and chip shop would be inappropriate
- Plan layout is identical to previous proposal and applicant has failed again to demonstrate that the ducting would do no harm
- One table and two chairs would not represent the intention of the unit to be used as a restaurant – table would be used as a waiting area for takeaway customers
- No reference as to whether unit would offer a delivery service
- Letters were only sent to adjacent properties, not houses further away
- Any potential delivery service might have a negative effect on traffic
- A fast food outlet is not needed in this parade
- Takeaway would increase traffic in the area
- There has already been changes in use of the parade over time and further change of use will deprive the local population of a retail unit, if approved
- Fast food outlet would give rise to odour nuisance to nearby shops and flats

Five notes of support have been received and covers the following points:

- General support – scheme is a great idea
- Customers of Beatty Café state they wish to have a hot food takeaway
- There is a big demand for the hot food takeaway in the area
- The Co-operative store, newsagents and hairdressers provide locals with all retail needs so further retail options are limited in the parade
- The bakery has been closed for almost a year and its continued closure affects the appearance other parade negatively
- The proposed scheme would have ample parking
- Refusal of the scheme would damage the image of the Beatty Road parade
- Local residents would be disappointed in the application fails
- There are not many fast food options for residents of Sovereign Ward so opening a new takeaway is a great idea

- Home delivery would help those with limited mobility, the elderly and families with children
- Pizza takeaway would be a great idea for flat residents above and would provide more variety
- Only existing choice for takeaway on the parade is fish and chips
- Shop looks neglected and dirty
- Opening the unit would make the parade light and bright again
- Bakery oven in shop is very difficult to remove, but could remain to cook pizzas
- An extractor already exists at the property and the proposed extractor will make no difference
- Fumes from fish and chip shop would mask odour from proposed pizza shop
- The empty shop is causing damp and corrosion
- Opening hours proposed are the same as the fish and chip shop, so would not cause an issue for neighbouring residents
- The operation of the unit will be a benefit to the vitality and viability of the local centre

### **Appraisal:**

#### Principle of development:

The application site is located within the St Anthony's and Langney Point Neighbourhood as identified in the Core Strategy (adopted 2013) and is a Local Shopping Centre. It is located within an area of which several policies are applicable from the Eastbourne Borough Plan (2001-2011) and the Core Strategy (adopted 2013).

The Core Strategy identifies the Vision for the St Anthony's and Langney Point neighbourhood as 'St Anthony's & Langney Point will increase its economic importance to the town through the provision of additional employment floorspace and jobs, whilst enhancing its levels of sustainability through the provision of additional affordable housing and community and health facilities and reducing the impact of the car.'

The principle of policy D4 (Shopping) is to provide 'a sustainable network of local shopping. The Council will enable the enhancement of consumer choice and strengthening of the vitality, viability and accessibility of the district and local centres by supporting new retail development.'

Eastbourne Borough Plan policy SH7 (District and Neighbourhood Centres) states that 'within the district, local and neighbourhood centres, proposals for the change of use of existing ground floor shopping units from Class A1 uses to uses in Classes A2 and A3 will be considered having regard to the following criteria:

- a) the location and prominence of the premises within the shopping frontage;
- b) the floorspace and frontage of the premises;
- c) the number, distribution and proximity of other ground floor premises in use as, or with planning permission for, A2 and A3 uses (within any centre A1 uses should predominate);
- d) the particular nature and character of the use proposed, including the level of activity associated with it;
- e) whether the use would harm residential amenity (see Policy HO20);
- f) whether adequate short term parking facilities are available.

The proposal would be contrary to policy as it would further erode A1 uses within the parade. The Local Shopping Centre consists of nine units, two of which are A3 class, two A2 class and one D1 (survey October 2015 + site visit August 2016).

The balance of uses is a valid consideration in maintaining the vitality and viability of district, local and neighbourhood centres. Too many non-A1 uses may result in dead frontage that makes the centre less attractive to shoppers so that ultimately it becomes less viable.

Impact of proposed development on amenity of adjoining occupiers and surrounding area:

There would likely be an impact from smell if suitable extraction equipment was not used. The ground floor unit extends to the rear beyond the existing rear terrace/entrances of the residential properties above. Given this the applicant could not run a duct to the top of the property to discharge above residential windows.

The ducting/filters would need to be sufficient at ground floor level to alleviate odours, given no specification/documentation has been provided to show otherwise, it is considered that the proposal would like lead to smell nuisance detrimental to the amenity of the residential properties above.

The applicant has supplied statements which suggest that any odour emitting from the proposed operational use would be masked by the existing café and fish and chip shop. It may be the case that odours associated with the use would not appear as obvious when other hot food preparations are occurring in tandem. It is also stated that the extraction provision will be "entirely within the unit in an arrangement that will have only the extraction outlet to the rear". Nevertheless, no tangible assessments or proof of this has been provided by the applicant and therefore this cannot significantly inform assessment of the proposal.

The proposal includes opening times of 8:00am to 9:30pm Monday to Sunday. This is an amended operational opening scheme to that proposed in the previously proposed scheme (re: 160617), which proposed opening hours of 11am to 11pm. These revised opening hours mirror those of the fish and chip shop next door and the A3 unit at 44 Beatty Road (currently the Beatty Road Café).

Opening times for these properties are restricted by planning conditions, as below:

No.44 – COU to Class A3 granted 2011 – Hours of operation restricted to 8am to 930pm (currently in use as a café).

No.38 – COU A1 to Hot Food Take Away granted 1995 – Hours of operation restricted to 8am to 930pm (Currently in use as Fish and Chip shop).

This is a residential area, with residential properties above the proposed use. The formerly proposed operating times until 11pm were considered unacceptable in this residential area and would be likely to have a detrimental impact in terms of noise impact from patrons coming and going until 11pm. Therefore, in the previous scheme, this consideration formed a reason for refusal.

However, this is the most significant part of the scheme which has been amended for this current proposal. The opening hours for an A3/A5 unit in this location would be acceptable. However, the principle of the change of use in its contravention of adopted policies has not been overcome. As a result, the opening hours will no longer form a reason for refusal of the scheme; however this change does not overcome the other reasons for refusal.

#### Design issues:

In terms of design the change of use would have limited impact on the visual appearance of the building. Ducting would be minimal given the location of the unit and therefore there would be little impact on the visual appearance of the building.

The proposed floor layout only has one table with 4 covers and as such is unlikely to fulfil much restaurant activity with the this table and chairs likely to provide patrons with seating whilst waiting/collecting their take-away, the application has been evaluated on this basis/judgement.

#### Impacts on highway network or access:

It is probably unreasonable to assume that a Class A3/A5 would result in additional traffic than could potentially be drawn to a class A1, albeit the times may be different for the largest footfall which for a Class A3/A5 is likely to be in the evening. ESCC Highways have confirmed that it would not seek to restrict the granting of consent on Highway grounds. Therefore it is not considered a reason for refusal could be substantiated on the grounds of impact on parking in the area.

#### Other matters:

Although a number of changes of use can be considered under prior approval, this does not extend to changes of use Class A1 to A5. Class A1 to A3 could be considered under Class C of Part 3 Schedule 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (As Amended) though the LPA would not consider the proposed use to be Class A3 given the lack of facilities for consumption of food on the premises. Regardless the site is situated within a Local Shopping Centre as defined by Saved Policy SH7 of the Borough Plan 2007 and it would likely be considered that the impact of the change of use would be detrimental to the sustainability of the key shopping area should an application for prior approval under the above class be submitted.

#### **Human Rights Implications:**

The impacts of the proposal have been assessed as part of the application process. Consultation with the community has been undertaken and the impact on local people is set out above. The human rights considerations have been taken into account fully in balancing the planning issues; and furthermore the proposals will not result in any breach of the Equalities Act 2010.

#### **Conclusion:**

The proposed change of use is contrary to policy as the loss of the Class A1 unit would further erode the class A1 units within the parade, result in the parade of shops not predominantly being Class A1 resulting in harm to the vitality and viability of the local centre. The applicant argues that the bakery formerly located on the site operated in a similar manner, providing coffee shop facilities and baked goods. Nevertheless, it is not

considered that these operations extend to consider the former use as an A3 or A5 operation. As such, the harm in losing an A1 unit is considerable and unfavourable.

The applicant has also not submitted any documentation to demonstrate that the proposed ducting would be sufficient to mitigate smell nuisance from cooking on the premises and therefore it is considered that this would result in impacts on the amenity of the residential properties above and surrounding.

**Recommendation:**

Refuse

**Reasons for decision**

1. The proposed change of use from Class A1 to Class A3/A5 is contrary to saved policy SH7 of the Borough Plan 2007 and Policy D4 of the Core strategy 2013, the loss of the A1 would further decrease the retail provision in this shopping centre which would harm the vitality and viability of the local centre.
2. The applicant has failed to demonstrate that the proposed ducting will be sufficient to alleviate smell nuisance on the surrounding residential properties contrary to saved policy HO20 of the Borough Plan 2007 and policy b2 of the Core Strategy Local Plan 2013.

**Appeal:**

Should the applicant appeal the decision the appropriate course of action to be followed, taking into account the criteria set by the Planning Inspectorate, is considered to be **written representations**.