

Recommendation Report for Planning Permission**REF NO:** M/93/12/**LOCATION:** The Middleton Pharmacy
132 Middleton Road
Bognor Regis**PROPOSAL:** Application for Variation of Condition No's 3 & 4 imposed under planning application M/81/09 relating to change of ownership and opening hours.**SITE AND SURROUNDINGS**

DESCRIPTION OF APPLICATION	The proposal seeks to extend the hours of operation to increase to 9.30-11pm Monday to Saturday and 10-6pm on Sundays and Bank Holidays. Currently the restrictions are 9.30-5.30pm Monday to Friday and 10-4.30pm Saturday, 10-4pm Sundays and Bank Holidays.
SITE AREA	Approximately 91 square metres.
RESIDENTIAL DEVELOPMENT DEN	N/A
TOPOGRAPHY	Parade of shops are on a higher level than the road with a grass bank.
TREES	None of any significance affected by the proposed development.
BOUNDARY TREATMENT	Front boundary is open to the highway.
SITE CHARACTERISTICS	Parade of retail units, No. 128 has a bow window. No. 132 is two storeys with residential above, brown shop front with white smooth rendered walls and a red tiled roof. Other users in parade are newsagents, estate agents, accountants, diabetic company, parts and repair for Hyundai.
CHARACTER OF LOCALITY	Shopping parade within an Area of Special Character. Surrounding area has a mixture of residential properties of various styles and designs.

RELEVANT SITE HISTORY

M/24/09/	Front extension and change of use from shop into two flats	Refused 03-06-2009
M/81/09/	Change of use of business premises from A1(Pharmacy) to A3 (coffee shop/cafe)	Approve Conditionally 20-10-2009

M/16/12/	Application for variation of conditions 3 & 4 following grant of planning permission M/81/09/ relating to change of name & opening hours	Withdrawn 04-04-2012
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REPRESENTATIONS

Representations received:

Middleton Parish Council

Objection

When application M/81/09 was agreed, permission was given to an individual and did not enure for the benefit of the land because permission would not normally be granted in this location but granting permission exceptionally the Local Planning Authority have regard to the particular circumstances relating to the proposal in accordance with Policy GEN7 of the Arun District Plan. Those comments remain apposite now so Condition 3 should be granted to Mrs Y Wharmby only and must not endure with the land.

The coffee shop/cafe occupies the site of a former pharmacy and there is living accommodation both above and in the attached shop (a newsagent who has to start very early each morning). There is residential accommodation across the road and adjacent shops with flats above. M/81/09 Condition 4 was set carefully with opening hours to match those of surrounding shops and has worked to date. There is strong opposition to the extended hours suggested because it will be detrimental to the living conditions, amenities and environment of adjoining and nearby properties and residents. Policy GEN7.

Private functions such as parties and weddings will cause an unacceptable level of noise, particularly in the evening, which is regarded as unneighbourly. Policies GEN7(iv) and GEN32. Any planning approval should prevent these types of events in this sensitive area of Special Character (Policy AREA1).

Further, there is only limited roadside parking nearby which is used for the general benefit of the local shops. Large gatherings for parties or weddings will lead to parking being denied to shoppers which will adversely affect trading at other shops. Policies GEN7(viii) and GEN12.

Informative Condition 5 M/81/09 also requires revisiting. Menus have changed and there may be a need for ventilation and extraction systems to be installed. (This would require planning permission).

Comments on Representations received:

Noted and agreed with regard to noise and activity generation

CONSULTATIONS

Environmental Health

WSCC Strategic Planning

Consultations responses received:

County Highways

No objection

Environmental Health

It is understood that a mechanical extract systems is not currently required, odour (and noise) produced from cooking activities is not significant.

It is noted from the Parish Council reps that there is residential accommodation in separate occupation above (not otherwise apparent in the application)? Consequently there may be potential for noise from customers to impact upon it, if this is the case more information should be required in respect of the sound attenuation properties of the floor ceiling partition and measures may be required to improve this.

Comments on Consultation responses:

Comments noted.

POLICY CONTEXT

Designation applicable to site:
Within Built Up Area Boundary
Class B Road
Area of Special Character
Building of Special Character

DEVELOPMENT PLAN POLICIES

Arun District Local Plan:	GEN7	The Form of New Development
	GEN22	Buildings or Structures of Character
	GEN32	Noise Pollution
	AREA1	Areas of Special Character
	DEV26	Criteria for Retail Development

PLANNING POLICY GUIDANCE

NPPF

National Planning Policy Framework

POLICY COMMENTARY

The above policies combine to describe the criteria against which the application will be assessed particularly with regard to visual and residential amenity.

The Development Plan consists of the Arun District Local Plan 2003 and the South East Plan adopted in 2009.

In accordance with paragraphs 214 of the NPPF, the South East Plan is afforded full weight as part of the development plan. Footnote 41 (page 49) states the Governments clear policy intention to revoke regional strategies.

Paragraph 214 of the NPPF ensures that specific policies in Arun District Local Plan 2003 can carry weight but, because it predates 2004, a reduced weight. The weight afforded to the policies with Local Plan policies can be assessed according to their level of consistency of the various policies with the National Planning Policy Framework. It should be noted that the NPPF states that weight is given to individual policies and not to the plan as a whole.

The emerging local plan has recently been approved by the Council and is therefore a material consideration in the determination of this planning application. Whilst it has not been formally adopted due weight has been given to its policies in terms of the decision making process at this stage.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The proposal is considered to conflict with relevant Development Plan policies in that it has not been demonstrated that there would be no materially adverse effect on the residential amenities of the adjoining properties and the established character of the surrounding area.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

The site lies within an Area of Special Character and the building is on the local list of Buildings or Structures of Character. The application accords with Local Planning Policy AREA 1 Areas of Special Character and Policy GEN22 Buildings or Structures Of Character in that there are no external alterations proposed which would not harm the appearance of the building and its historic integrity.

The two storey unit has residential on the upper level with a residential unit to the rear and side (No. 130) and there is parking to the front of the site. The application seeks to alter the named person to benefit from the permission and the hours of operation. This would result in an increase of hours into the evening Monday to Saturday and on a Sunday and Bank Holidays.

The site is located in a residential area. There is residential use above the cafe and properties above other units in the parade and opposite.

The Environmental Health Officer has stated there may be potential for noise from customers to impact on residential accommodation above and noise attenuation work may be required. No information has been submitted in this respect.

No information has been submitted clarifying or identifying the nature or scale of the use proposed, how often weddings/parties are likely to occur or outlining how noise would be reduced to adjoining residential premises. The activity and noise levels generated late into the evening potentially every day Monday to Saturday in a residential area and until 6pm every Sunday and bank holidays would be unneighbourly and exceed levels reasonably expected to be generated from premises operated as a coffee shop in a retail parade.

It is therefore recommended that the application be refused for the following reason.

HUMAN RIGHTS ACT

FOR REFUSAL

Human Rights Act:

The Council in making a decision, should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European

Convention on Human Rights.

Consideration has been specifically given to Article 8 (the right to respect for private family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for refusal of permission in this case interferes with applicant's right to respect for their private and family life and their home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of neighbours). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for refusal is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal no negative impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

RECOMMENDATION

REFUSE

- 1 Based on the limited information submitted with the application the Local Planning Authority is not satisfied that amending the permission by, increasing the hours of operation could be undertaken without adversely affecting the residential amenities of adjoining properties by reason of the general level and nature of activity and the traffic generated outside of normal retail hours and the proposal thereby conflicts with policies GEN7 and DEV32 of the Arun District Local Plan.