Recommendation Report for

REF NO: **R/184/17/PD**

LOCATION: 51 Sea Lane
Rustington

PROPOSAL: Notification for prior approval under class C for a change of use from a shop (Class A1) to a restaurant/cafe (Class A3)

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above Change of use under Schedule 2, Part 3, Class C of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) from Class A1 (retail) to a restaurant Class A3. The proposal includes details of the proposed extraction flue and waste storage.
SITE AREA	88sqm
BOUNDARY TREATMENT	Site frontages to front and side open.
SITE CHARACTERISTICS	3 storey end of terrace property located at the end of a shopping parade at the entrance to Cudlow Avenue. Ground floor retail. Shop unit to front. Layby parking adjacent to road frontage.
CHARACTER OF LOCALITY	Predominantly residential. Premises is located in a retail parade on the edge of the village centre. A similar retail parade exists to the north along Sea Lane.

RELEVANT SITE HISTORY

R/64/98	Extension to the shop, replacement garage, roof garden and conservatory	ApproveConditionally 24-09-1998
R/90/99/	Extension to the shop, replacement garage and roof garden. (Changes to the approved plan R/64/98)	ApproveConditionally 09-06-1999

REPRESENTATIONS

Representations received:

Objection - (i) The proposal to change to a Class A3 use for a restaurant/caf would, most certainly,

attract a major increase in the number of standing vehicles on the highway which would affect the free flow of traffic on the public highway, at a point extremely close to where regular traffic congestion is suffered, and thereby add to the hazards of road users and pedestrians at this point
(ii) The proposal would provide inadequate parking facilities to service a Class A3 use e.g. delivery vehicles and customer vehicles alike
(iii) The proposed change of use would increase the pressure for on-street parking, where there is currently only very minimal and, most certainly, insufficient provision, particularly as the public highway in this vicinity is subject to seasonal parking restrictions (no parking between 8:00 am and 6:00 pm from 1 April to 30 September)
(iv) The proposal would be prejudicial to the character of the Conservation Area, even though its location is just outside the boundary. It would be particularly detrimental to the setting of Listed Buildings in close proximity, and would have an adverse effect on the quiet enjoyment and amenities of the residents of the neighbouring properties, and in particular, Nos. 47 and 49 Sea Lane
(v) The proposed use would have an unneighbourly impact on the locality by reason of the general level and nature of activity that would be generated
(vi) The proposal for a restaurant/cafe at this location, which has residential properties above most of the retail outlets, along this shopping parade, would most certainly be detrimental; and adversely affect, the quiet enjoyment of the occupiers of these properties.
My Council would also request that in view of all of the above objections in connection with highway issues, the West Sussex County Council, as the Highway Authority, be asked to reconsider this Application and revise its own observations in respect of this Application

32 Objections (including a petition with 7 signatures) - This will lead to an increase in traffic using what is already a dangerous junction/ lay-by, leaving Cudlow Avenue currently from the west end is dangerous anyway due to restricted vision and no pavement on the east side of sea lane.
There is very little provision for any parking that will be required with the potential of a new restaurant/ cafe, thus creating more potential for accidents/ incidents.
Concerns at the potential of the constant noise from unsightly venting and smell from any cooking that will take place as Cudlow Avenue is in the path of the prevailing wind direction.Increased traffic activity due to the delivery of supplies required for a venue that provides food and drink.
Increased traffic activity possibly at times that will impact on the quality of life for residents due to customers arriving and leaving. This cannot currently be accurately determined, as the application gives no specifics as to the specific type of operation under consideration.

The use of the private roads of the Cudlow estate for access and exit due to the dangerous corner of Cudlow and Sea Lane. It is worth noting that these roads are unadopted and therefore it is the responsibility of the Freeholders to maintain the integrity of the roads. The estimated increase in traffic will put a strain on road surfaces not designed or built for commercial use.

Limited parking for the Restaurant as the current four spaces are shared with a shop, and three businesses. Therefore there is concern that patrons of the proposed new business will park in the private roads of the Cudlow estate, which have a covenant that precludes the use of the road for commercial purposes.

The potential for increased rubbish that will attract vermin and foxes with the attendant health concerns.

The positioning and use of a venting system for the proposed kitchens, which are according to the plans to be hidden by trees. Surely this then proposes a fire risk, particularly as the houses directly opposite the side entrance to number 51 is thatched.

There are 5 eating places in close proximity to no 51. Granting this proposal would not benefit the local community.

2 support - We have lived in the maisonette above the commercial property for over thirty years and
will continue to do so, we are now retired. There is no way we would endorse anything that we felt would compromise our enjoyment of our flat and roof garden.
The fireplace shop had a skip permanently parked at the side of the shop which was emptied approx. every two weeks and a large rubbish/recycle bin next to it being changed every Monday morning between 7 to 8 am. No complaints were ever made. Lorries made deliveries most days and larger lorries delivered Fireplaces and Stoves at least twice a week none of which caused any problems and again no complaints were ever received.
Marble and stone were sometimes cut on site causing a certain amount of noise and dust, again no complaints received.
There is and has always been a right of way for all the commercial properties over Cudlow Avenue to a dedicated service road at the rear of the commercial properties for deliveries and a turning point for lorries.
It is highly unlikely that potential customers will use or park in the unadopted roads near by, as they rarely do now as most have gates at both ends with automation at one end for use with residents zappers.
There is customer parking at the side of the property and a parking bay which is for use of customers using the commercial properties and at some times of the day is empty. More available parking than some of the other caf s.
The proposed extractor fan will be sited beneath our roof garden and barely seen, with a very low decibel sound out put slightly louder than somebody breathing and certainly will not omit nasty smells or dangerous sparks.
Unfortunately the lack of retail shops is down to us all, outside retail parks selling everything cheaper and expecting small business to price match and biggest problem of all the internet.
A family run good quality tea room would certainly be a different and pleasant addition to Rustington.

Comments on Representations received:

Representations made by members of the public are a relevant consideration but only those comments that relate to the following relevant issues which are set out in the relevant legislation;

(a) noise impacts ,

(b) odour impacts ,

(c) impacts of storage and handling of waste ,

(d) impacts of the hours of opening ,

(e) transport and highways impacts ,

(f) whether it is undesirable for the building to change to a use falling within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order because of the impact of the change of use on;

(i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or
(ii) where the building is located in a key shopping area, on the sustainability of that shopping area.

(g) the siting, design or external appearance of the facilities to be provided for ventilation/extraction and storage of rubbish

Comments on the relevant issues are as follows;

a)-d) The Councils Environmental Health Officer has raised no objection subject to conditions relating to;
Noise control
Odour Control
Waste Collection
Opening Hours

e) Highways Objection - The Local Highways Authority has assessed the application and has not raised any objection to the proposal.

f) Adequate provision of A1 shops and Sustainability of Town Centre - The proposed location is in a secondary shopping frontage (not a key shopping area) within Rustington Village centre where there is no shortage of A1 shop units .

(g) No objections.

RELEVANT ISSUES RAISED
The starting point for the consideration of the prior notification under permitted development rights of a change of use from an A1 shop to an A3 restaurant is that principle of the change of use is acceptable. Issues other than those narrowly defined issues within the legislation set out above cannot be taken into account.

The relevant impacts on residential properties (subject only to technical conditions relating to sound and odour attenuation, waste collection and opening hours set out in legislations) are considered to be acceptable given the location of the property and the fact that other properties in the Sea Lane area located similarly close to residential dwellings are used for similar purposes i.e. restaurants and tea rooms. The use of the premises as a restaurant is no different to many other uses of properties in this and the nearby retail parade to the north.

The opening hours would be controlled by condition and are considered to be similar to other restaurant businesses in the village centre.

The waste and collection facilities are considered acceptable especially when considered against the previous retail use which operated from the premises.

The Highway Authority (West Sussex County Council) have determined that the highways and transport impacts of the use of the property would be no greater than the currently permitted use and that there are no grounds for objection. The impacts on residential properties nearby are not considered to be significantly worse than the existing and surrounding uses given the city centre location of the property.

NON RELEVANT ISSUES RAISED
The following issues raised by members of the public cannot be take into account because they do not fall into the narrowly defined relevant issues for consideration under permitted development legislation;

The number of existing uses.
Building Regulations i.e. fire risk - These are technical issues dealt with under other legislation.
The benefit to the local community.

CONSULTATIONS

Environmental Health
WSCC Strategic Planning
Economic Regeneration

Consultations responses received:

Environmental Health - .Noise and Odour
Unfortunately, there is insufficient information provided with this application to allow me to form a proper opinion of whether noise, or odour nuisance may be anticipated in this case. I request a suitable Noise Assessment Report to be provided for any ventilation system and fuller detail of odour/fume control measures designed to prevent nuisance as described.
Noise (Acoustic report) Before the development commences, the applicant shall submit a report, prepared in accordance with the provisions of BS4142 to predict noise levels at the nearest noise sensitive location from any mechanical exhaust system that may be put in place.
Reason: To safeguard the amenities of nearby residents in accordance with Arun District Local Plan policies GEN7 and GEN32.
Air (Ventilation equipment) Equipment detailed to discharge odours and fumes from the cooking process shall have been agreed, installed and be in full working order to the satisfaction of the Local Planning Authority. Please provide detail of abatement equipment, type of cooking to be carried out, and patron numbers.
Reason: To ensure that unsatisfactory cooking odours outside premises are minimised in the interests of the amenity of occupiers of nearby properties in accordance with Arun District Local Plan policies GEN 7, DEV26 and GEN34.
Hours of operation.
1. Deliveries by commercial vehicles shall only be made to or from the site, between the hours of 8:00 and 17:00 hours Monday to Saturday and 09:00 to 13:00 hours on any Sunday, Public or Bank Holiday.
2. Hours of operation of this business to be restricted to 9:00 to 18:00 hours on Monday to Thursday, any Sunday, Public or Bank Holiday and 9:00 to 22.30 hours on any Friday, or Saturday unless otherwise specifically agreed by the Local Planning Authority.
Reason: In order to prevent detriment to the amenity from potentially noisy operation.
Informative :
1.Sanitary Accommodation. In order to accord with the requirement of Food Hygiene Law then a lobby should be provided between any sanitary accommodation and an eating area, or area where open foods are handled. Any toilet to be provided with proper ventilation. The stated provision of one only WC and wash hand basin will be suitable and sufficient for up to and including 20 seats only cf 'Arun District Council Provision of Sanitary Accommodation in Food Business' It is recommended that at least one facility should provide disabled access.
2.Registration of Food Premises: The premises will require Registration under the Food Safety Act 1990 and will need to comply with the standards contained in the relevant Food Hygiene Regulations prior to becoming operational/ The applicant is advised to contact Environmental Health for further information cf Carol Reynolds Senior Environmental Health Officer,

carol.reynolds@arun.gov.uk Tel 019037 376782
3. Drains The drainage serving kitchens at commercial hot food businesses shall be fitted with a grease
trap/separator of a proportionate capacity to effectively contain grease residue arising from the estimated numbers of hot meals served and waste water flow rate. The applicant shall provide the Local Planning Authority with details of their proposed grease trap/separator in order to demonstrate design and installation will be in compliance with BS EN 1825-1:2004, & BS EN 1825-2:2004

County Highways - Under the current General Permitted Development Order (GPDO), it is permitted development to change use from a A1 Shop use to A3 restaurant use subject first to prior approval being granted. As part of the prior approval process there are a number of matters to be considered. This includes matters relating to highways and transport. However the GPDO is quite clear as to what highway matters can be considered, namely whether the proposal is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site.
West Sussex County Council in its role as LHA (Local Highway Authority) has therefore considered the proposal on that basis. The proposal is not anticipated to result in a material increase or change in the character of traffic. Consequently, no highway concerns would be raised. In principle, the current GPDO gives limited ability to consider wider highway and transport impacts beyond those set out. The site already has an established A1 usage which during its peak would have generated "drop in" custom throughout the day. Whilst we appreciate that this A3 facility could see an increase in custom at differing points in the day, it is not considered that this proposal would have a detrimental impact on highways safety. The prior approval is therefore considered acceptable in highway terms.

Comments on Consultation responses:

Comments noted

DEVELOPMENT PLAN POLICIES

Arun District Local Plan 2003:

PLANNING POLICY GUIDANCE

POLICY COMMENTARY

The application is determined under the provisions of Class C of the Town and Country Planning (General Permitted Development) Order 2016 in respect of a development consisting of a change of use of a building to a use falling within Class C3 (restaurant and cafes) of the Schedule to the Use Classes Order from a use falling within Class A1 (Retail) of that Schedule

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

This application falls to be determined under the provisions of Class C of the Town and Country Planning (General Permitted Development) Order 2016 in respect of a development consisting of a change of use of a building and any land within its curtilage to a use falling within Class A3 (restaurant) of the Schedule to the Use Classes Order from a use falling within Class A2 (Financial and Professional Services) of that schedule.

The principle of the development is not in dispute. Class C allows for the change of use (and limited building operations) provided that:

(a) the cumulative floor space of the existing building changing under Class C exceeds 150 sq metres;
(b) the development (together with any previous development under Class C) would result in more than 150 sq m of floor area in the building having changed use under Class C.
(c) the land or the site on which the building is located is or forms part of -
i) a site of special scientific interest
ii) a safety hazard area; or
iii) a military explosives storage area
(d) the site is, or contains, a scheduled monument, or
(e) the land or building is a listed building or is within the curtilage of a listed building.

The above criteria are considered to have been met.

Class C (paragraph 1) states that an application must be made to determine whether or not the prior approval of the Council will be required in respect of:

(a) noise impacts of the development
(b) odour impacts of the development
(c) impacts of storage and handling of waste in relation to the development
(d) impacts of hours of opening of the development
(e) transport and highways impacts of the development,
(f) whether it is undesirable for the building to change to a use falling within Class A3(restaurant) because of the impact of the change of us- (i) on adequate provision of financial and professional services or (ii) the sustainability of that shopping area.
(g) the siting, design or external appearance of the facilities to be provided for ventilation/extraction and storage of rubbish

The Order also states that the provisions of Paragraph W shall apply in relation to any application and part (10) of paragraph W includes the following:

"(10) The local planning authority must, when determining an application

(a) take into account any representations made to them as a result of any consultation under subparagraphs (5) or (6) and any notice given under sub-paragraph (8);

(b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012(a), so far as relevant to the subject matter of the prior approval, as if the application were a planning application; and

(c) in relation to the contamination risks on the site

(i) determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990(b), and in doing so have regard to the Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012(c), and

(ii) if they determine that the site will be contaminated land, refuse to give prior approval."

This allows the local planning authority to have regard to any representations received and the NPPF but only in relation to the issues stated above. Advice has been received from the DCLG which confirms that it is not possible to refuse prior approval on the basis of an issue/impact not listed above. The Local Planning Authority has 56 days to provide its comments to the applicant's agent or it is deemed that they have no objection.

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

TRANSPORT AND HIGHWAYS
The use of the property as a restaurant is not considered to generate a significant additional level of parking pressure beyond that of the existing A1 use for which the property already has permission. As such it is considered to be acceptable in highway and transport terms.

IMPACTS OF NOISE, ODOUR, STORAGE AND OPENING HOURS
Environmental Health have not raised any objections to the scheme. The current proposals will achieve an acceptable level of odour and noise controls. The extraction equipment would be located to the side and would not be readily visible in the street scene. Storage would be controlled by Environmental Health if problems arise in the future. Delivery times are proposed to be controlled by condition.

Given the potential increase in opening hours of the premises beyond those normally associated with a retail use it is considered reasonable and necessary to restrict the hours of opening in the interest of residential amenity. It is noted that the off licence to the south is open on Sundays and in the evenings. The restrictions requested by environmental health with regard to restricting opening times are considered reasonable given the close proximity of residential units.

SUITABILITY OF CHANGE OF USE
The site is situated within an existing retail parade which comprises retail and office uses at ground floor and residential/commercial use above. The shopping area in this location provides key services to local residents and tourists. There are many retail units in the vicinity of the application site and in the nearby primary shopping area of Rustington village centre such that the loss of this unit would not have an undesirable impact.

NPPF
The proposal for the change of use is considered to comply with the National Planning Policy Framework so far as relevant to the subject matter of prior approval

DESIGN AND VISUAL AMENITY
The only external changes included in the application are ductwork and a fan. It is considered that these minor design changes would be sympathetic and in keeping with the established character of the locality. Therefore, no objection are raised in relation to the design of the proposal.

CONTAMINATION
There are no issues of land contamination relevant to this prior notification.

SUMMARY
It is therefore recommend that no objection is raised to the proposal subject to requested condistions

HUMAN RIGHTS ACT

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 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval 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 the following 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).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

NO OBJECTION SUBJECT TO CONDITIONS

1 Before the use commences, the applicant shall submit a Noise (Acoustic) report, prepared in accordance with the provisions of BS4142 to predict noise levels at the nearest noise sensitive location from any mechanical exhaust system that may be put in place.

Reason: To safeguard the amenities of nearby residents in accordance with Arun District Local Plan policies GEN7 and GEN32.

2 Prior to the use commencing air (Ventilation equipment) detailed to discharge odours and fumes from the cooking process shall be agreed, installed and be in full working order to the satisfaction of the Local Planning Authority. The submitted details should include detail of abatement equipment, type of cooking to be carried out, and patron numbers.

Reason: To ensure that unsatisfactory cooking odours outside premises are minimised in

the interests of the amenity of occupiers of nearby properties in accordance with Arun District Local Plan policies GEN 7, DEV26 and GEN34.

3 Deliveries by commercial vehicles shall only be made to or from the site, between the hours of 8:00 and 17:00 hours Monday to Saturday and 09:00 to 13:00 hours on any Sunday, Public or Bank Holiday.

Reason: In the interests of residential amenity in accordance with policy GEN7 of Arun District Local Plan.

4 Hours of operation of this business to be restricted to 9:00 to 18:00 hours on Monday to Thursday, any Sunday, Public or Bank Holiday and 9:00 to 22.30 hours on any Friday, or Saturday unless otherwise specifically agreed by the Local Planning Authority.

Reason: In order to prevent detriment to amenity in accordance with policy GEN7 of Arun District Local Plan.

5 For the avoidance of doubt the approved details are the location, block/site plan,, North Elevation, Refuse facilities and floor plans.

6 INFORMATIVE: .Sanitary Accommodation. In order to accord with the requirement of Food Hygiene Law then a lobby should be provided between any sanitary accommodation and an eating area, or area where open foods are handled. Any toilet to be provided with proper ventilation. The stated provision of one only WC and wash hand basin will be suitable and sufficient for up to and including 20 seats only cf 'Arun District Council Provision of Sanitary Accommodation in Food Business' It is recommended that at least one facility should provide disabled access.

7 INFORMATIVE: Registration of Food Premises: The premises will require Registration under the Food Safety Act 1990 and will need to comply with the standards contained in the relevant Food Hygiene Regulations prior to becoming operational/ The applicant is advised to contact Environmental Health for further information cf Carol Reynolds Senior Environmental Health Officer, carol.reynolds@arun.gov.uk Tel 019037 376782

8 INFORMATIVE: Drains The drainage serving kitchens at commercial hot food businesses shall be fitted with a grease trap/separator of a proportionate capacity to effectively contain grease residue arising from the estimated numbers of hot meals served and waste water flow rate. The applicant shall provide the Local Planning Authority with details of their proposed grease trap/separator in order to demonstrate design and installation will be in compliance with BS EN 1825-1:2004, & BS EN 1825-2:2004